CLERK'S COPY.

# TRANSCRIPT OF RECORD

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 197

THE UNITED STATES OF AMERICA, PETITIONER

vs.

LOUIS H. PINK

*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT*

**PETITION FOR CERTIORARI FILED JULY 1, 1935**
**CERTIORARI GRANTED OCTOBER 14, 1935**

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1935

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## No. 197

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## LOUIS H. PINK

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*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT*

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In United States Circuit Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

*against*

GEORGE S. VAN SCHAICK, SUPERINTENDENT OF INSURANCE OF THE State of New York, Liquidator of the Domesticated United States Branch of the First Russian Insurance Company, Established in 1827, defendant-appellee

*Statement under rule 13*

On November 14, 1934, the above-entitled suit was commenced by the complainant, United States of America, against the defendant, George S. Van Schaick, by filing a verified bill of complaint in the District Court for the Southern District of New York, and by the issuance of a subpoena. On November 26, 1934, the defendant filed a notice of appearance. On December 7, 1934, an order to show cause, supported by affidavit, was signed, temporarily restraining defendant and requiring defendant to show cause on December 11, 1934, why complainant's motion for an injunction pendente lite should not be granted.

On December 8, 1934, an order to show cause, supported by affidavit, was signed, requiring complainant to show cause on
2 December 11, 1934, why the bill of complaint should not be dismissed for failure to state facts sufficient to constitute a cause of action.

Pursuant to a notice of motion of the defendant served on the complainant and an order of the District Court made thereon, complainant filed on December 10, 1934, a bill of particulars of the bill of complaint. Argument was had on the motion to dismiss the complaint and on the motion for an injunction pendente lite before Honorable Alfred C. Coxe, United States District Judge, on December 18, 1934. On December 20, 1934, there was filed an order and decree denying complainant's motion for an injunction pendente lite and granting defendant's motion to dismiss the complaint for insufficiency and suspending the operation of the order and decree until the determination of the appeal by the complainant. On December 22, 1934, the appeal was allowed.

In United States District Court

*Subpoena*

Equity Subpoena Form No. 97
Eq. Vol. 79, page 160

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO GEORGE S. VAN SCHAICK, SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, LIQUIDATOR OF THE DOMESTICATED UNITED STATES BRANCH OF THE FIRST RUSSIAN INSURANCE COMPANY, ESTABLISHED IN 1827:

GREETING: You are hereby commanded to appear before the Judges of the District Court of the United States of America
3 for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said court in a suit in equity, by United States of America and to further do and receive what the said court shall have considered in this behalf. And this you are not to omit under the penalty on you of two hundred and fifty dollars ($250).

WITNESS, Honorable JOHN C. KNOX, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 14th day of November, in the year One Thousand Nine Hundred and Thirty-four, and of the Independence of the United States the One Hundred and Fifty-ninth.

MARTIN CONBOY,
*United States Attorney, Solicitor for Complainant, U. S. Courts and P. O. Bldg., Broadway and Park Row, New York City.*

CHARLES WEISER, *Clerk.*

The defendant is required to file his answer or other defense in the above cause in the Clerk's Office on or before the twentieth day after service hereof excluding the day of said service, otherwise the bill aforesaid may be taken pro confesso.

[SEAL] CHARLES WEISER, *Clerk.*

4 In United States District Court, Southern District of New York

Equity E 79–160

UNITED STATES OF AMERICA, COMPLAINANT

*against*

GEORGE S. VAN SCHAICK, SUPERINTENDENT OF INSURANCE OF THE State of New York, Liquidator of the Domesticated United States Branch of the First Russian Insurance Company, Established in 1827, defendant

*Complaint*

*To the Honorable Judges of the District Court of the United States for the Southern District of New York:*

The United States of America, by its attorney, Martin Conboy, United States Attorney for the Southern District of New York, complains of the defendant herein and alleges on information and belief:

I

That the complainant herein is a corporation sovereign and body politic.

II

That the defendant was at all times hereinafter mentioned and now is Superintendent of Insurance of the State of New York.

III

That the First Russian Insurance Company, Established in 1827, at all the times hereinafter mentioned, with the exceptions hereinafter noted, was a corporation organized under the laws of the State of Russia, to transact the business of insurance, and was authorized by compliance with the requirements of the laws of the State of New York to transact such business in this state; that the said Insurance Company, as part of its compliance with the requirements of the laws of the State of New York, deposited with the Superintendent of Insurance as a fund out of which should be paid the claims of domestic creditors of said corporation, cash, securities, and other items of value; that the First Russian Insurance Company, Established in 1827, possessed assets and items of value in the United States other than and in addition to the said fund deposited with the Superintendent of Insurance.

IV

That heretofore and in the latter part of 1917 and the early part of 1918, or thereabouts, the said First Russian Insurance Company, Established in 1827, was, by decree of the Russian State, dissolved and all of its right, title, and interest and all the right, title, and interest of all its stockholders in its property, including the deposit hereinbefore mentioned with the Superintendent of Insurance of the State of New York, and the other assets of the First Russian Insurance Company, Established in 1827, in the United States
6 hereinbefore mentioned, were confiscated and expropriated by the said Russian State.

V

That on or about August 8, 1925, pursuant to an order of the Supreme Court of the State of New York, entered in the office of the Clerk of the County of New York on the 8th day of August 1925, as resettled by an order of said Court dated and entered the 11th day of September 1925, James A. Beha as the Superintendent of Insurance of the State of New York took possession of the property of the domesticated United States Branch of the First Russian Insurance Company, Established in 1827, under Section 63 of the Insurance Law of the State of New York.

That subsequently pursuant to Section 63 of the Insurance Law of the State of New York and the aforesaid orders of the Supreme Court of the State of New York, James A. Beha, as Superintendent of Insurance of the State of New York, and his successor in office, George S. Van Schaick, proceeded to liquidate the business of the domesticated United States Branch of First Russian Insurance Company, Established in 1827, and as a result thereof all domestic claims have been adjudicated and allowed, leaving undisposed of certain foreign claims which arose in the conduct of the business outside of the United States.

That on August 24, 1934, there remained in the custody of George S. Van Schaick as Superintendent of Insurance of the State of New York, as liquidator of the domesticated United States
7 Branch of First Russian Insurance Company, Established in 1827, cash securities and other assets having a value of $1,170,783.36.

VI

That among the persons who have filed, against the fund now in the possession of the defendant herein, claims arising out of the foreign business of the First Russian Insurance Company, Established in 1827, are Messrs. Campbell and Whipp, Attorneys at Law, residing in the City of New York, and Dr. M. Imchanitzky, residing in the City of New York. That the claims of these persons have been allowed in the sum of $128,010.58 and $38,403.17, respectively, and

that an order was made by the Supreme Court of New York, New York County, Special Term, on February 26, 1934, instructing the defendant herein to pay these respective sums to the claimants with interest thereon from June 16, 1931. That on appeal by the said George S. Van Schaick, Superintendent of Insurance, the aforesaid order of the Supreme Court of New York, New York County, Special Term, was affirmed by the Supreme Court of New York, Appellate Division, First Department, in a decision dated June 15, 1934. That from the aforesaid order of the Supreme Court of New York, Appellate Division, First Department, an appeal has been taken by said Superintendent of Insurance to the Court of Appeals of the State of New York which appeal is to be heard during the forthcoming term of said Court. That in the event that the decision of the Supreme Court of New York, Appellate Division, First Department, should be affirmed by the Court of Appeals, the defendant herein will be required to pay out to the claimants above described, Messrs. Campbell and Whipp, and Dr. M. Imchanitzky, the sums of $128,010.58 and $38,403.17, respectively, with interest thereon from June 16, 1931. That as a result of such payments the fund in the hands of the defendant herein will be correspondingly diminished.

## VII

That on or about November 16, 1933, the Russian State assigned to the complainant for a valuable consideration all of its right, title, and interest in and to the aforesaid cash, securities, and other assets, and also assigned to the complainant all the right, title, and interest of all Russian nationals in and to the aforesaid cash, securities, and other assets, and since November 16, 1933, the complainant has been and now is the sole and exclusive owner, entitled to the immediate possession of the aforesaid cash, securities, and other assets now in the possession of the defendant.

## VIII

That prior to the institution of this suit, complainant duly demanded of the defendant the said cash, securities, and other assets, together with the proceeds and avails thereof, but the defendant has refused to deliver the same or any part thereof to the complainant and continues wrongfully to withhold the same from the complainant, and now wrongfully possesses the said cash, securities, and other assets or the avails thereof. That as to the complainant since November 16, 1933, the possession of said property by the defendant has been wrongful and the defendant still wrongfully detains the same from the complainant.

## IX

That by reason of the defendant's possession of the cash, securities, and other assets described in paragraph V of this complaint, and by

reason of the defendant's wrongful refusal to deliver these assets or any part thereof to the complainant and by reason of the defendant's continuing to wrongfully withhold the same from the complainant, the defendant holds the same for the complainant as fiduciary and trustee for the complainant.

X

That the complainant has no complete, plain, and adequate remedy at law for the relief sought herein and therefore institutes this suit in equity.

Wherefore, the complainant prays:

(a) that a subpoena issue to the defendant named herein, commanding it to appear on a certain day and answer this bill of complaint and to abide by such orders and decrees as this Court may make in the premises;

(b) that the defendant herein, his successors, officers, agents, attorneys, or employees, and all persons or corporations acting under his direction or in his behalf be enjoined and restrained permanently and pending the determination of this suit from paying out or distributing to anyone other than this complainant any part of the said cash, securities, and other assets or the avails thereof, except such portion of these assets as the defendant herein has been directed by an order of the Supreme Court of New York, New York County, Special Term, in the proceeding described in paragraph V of this complaint to retain in a special account for the purpose of meeting expenses of administration;

(c) that the defendant be required by a decree of this Court to make a full, just, and complete account under the direction of this Court, and to pay over to the complainant the aforesaid cash, securities, and other assets and the proceeds and avails thereof and all interest, dividends, gains, and profits as have accrued or arisen or have been earned or received therefrom by the defendant since August 24, 1934, and all such gains or profits as would have accrued to the complainant but for the wrongful detention of said cash, securities, and other assets by the said defendant, and all damages the complainant may have suffered or sustained thereby;

(d) that the complainant may make such other and further relief as the case may require and the court may deem just in the premises.

MARTIN CONBOY,
*United States Attorney for the Southern District of New York, Attorney for Complainant; Office and P. O. Address, U. S. Courts and P. O. Building, Borough of Manhattan, City of New York.*

11 [*Duly sworn to by Leon E. Spencer, jurat omitted in printing.*]

12 In United States District Court, Southern District of New York

[Title omitted.]

*Order to show cause*

On the annexed affidavit of Leon E. Spencer, Assistant United States Attorney for the Southern District of New York, sworn to on the 7th day of December 1934, and on the verified bill of complaint filed herein on the 14th day of November 1934; and

It appearing that on December 4, 1934, the Court of Appeals of New York rendered a decision without opinion affirming the orders of the Supreme Court of New York, Appellate Division, First Department, which affirmed orders of the Supreme Court of New York, New York County, Special Term, instructing the defendant herein to pay the sums of $129,010.58 and $38,403.17 out of the cash, securities, and other assets referred to in the com-

13 plaint herein and as is more fully set forth in paragraph VI of the complaint herein; and

It further appearing that orders on the remittiturs of the Court of Appeals may be served upon the defendant immediately or within the next few days which will require the defendant to pay the aforesaid sums of $128,010.58 and $38,403.17 out of the said cash, securities, and other assets referred to in the complaint herein; and

It further appearing that as a result of these payments, the said cash, securities, and other assets in the hands of the defendant herein will be correspondingly diminished before an adjudication of the rights of the complainant herein to these funds can be determined by this Court; and

It further appearing that payment of the aforesaid sums of $128,010.58 and $38,403.17 out of the said cash, securities, and other assets referred to in the complaint herein will cause great, immediate, and irreparable injury and damage to the complainant herein by reason of the fact that the said cash, securities, and other assets will be diminished, by reason of the fact that the defendant herein, an officer of the State of New York, cannot be required to respond in damages to the complainant for said payments made pursuant to orders of the Supreme Court of the State of New York; and

It further appearing that the Court in the case of United States v. Bank of New York and Trust Company and the case of United States v. President and Directors of Manhattan Company by orders to show cause dated August 22, 1934, and August 25, 1934,

14 respectively, granted temporary restraining orders restraining and enjoining the defendants therein from paying out the funds there involved; and

It further appearing that the aforesaid restraining orders in the aforesaid cases are now in complete force and effect; and

It further appearing that this Court, on November 30, 1934, filed an opinion in the case of United States v. Bank of New York and Trust Company and in the case of United States v. President and Directors of Manhattan Company dismissing the complaints and denying motions of the complainant for injunctions pendente lite upon which orders of this Court have not yet been entered; and

It further appearing that upon the presentation for settlement of orders in the aforesaid cases dismissing the complaints and denying motions of the complainant for injunctions pendente lite, the complainant in the aforesaid cases will present orders continuing the aforesaid restraining orders now in force pending the determination of the complainant to take an appeal and pending the determination of such appeal; and

It further appearing that in order to enable this Court to adjudicate the rights of the complainant to the cash, securities, and other assets referred to in the complaint, and to effectively exercise its jurisdiction and enforce its judgment it is necessary and proper that the aforesaid cash, securities, and other assets remain in possession of the defendant pending the adjudication by this Court of the rights of the complainant, it is

Ordered that the defendant be and appear before this Court
15 at a Stated Term thereof for the hearing of motions to be held on the 11th day of December 1934, in Room 235 of the Old Post Office Building, in the City, County, and Southern District of New York, Borough of Manhattan, at the hour of 10:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, then and there to show cause, if any he has, why the defendant, his agents, attorneys, employees, assignees, successors, and all persons or corporations acting under his direction, or in his behalf, or in privity with him claiming so to act, should not be enjoined and restrained permanently and pending the determination of this suit from paying out or distributing to anyone other than this complainant any part of the cash, securities, and other assets or the avails thereof except such portion of these assets as the defendant herein has been directed by an order of the Supreme Court of New York, New York County, Special Term, to retain in a special account for the purpose of meeting expenses of administration of the proceeding in the Supreme Court under Section 63 of the Insurance Law of the State of New York to liquidate domestic claims adjudicated and allowed therein as set forth in paragraph 5 of the complaint herein; and it is

Further ordered that meanwhile the defendant herein, his successors, officers, agents, attorneys or employees and all persons or corporations acting under his direction or in his behalf be and they are hereby stayed, restrained and enjoined from distributing any of the cash, securities and other assets pending the determination of this motion.

16 Let service hereof be made upon the defendant by service personally upon the defendant or his representative of a copy, which need not be certified, on or before December 7, 1934.

Dated, New York, N. Y., December 7th, 1934.

HENRY W. GODDARD,
*United States District Judge.*

In United States District Court, Southern District of New York

[Title omitted.]

*Affidavit attached to order to show cause*

STATE OF NEW YORK,
*County of New York, Southern District of New York, ss.:*

Leon E. Spencer, being duly sworn, deposes and says:

17 1. That he is an Assistant United States Attorney for the Southern District of New York in charge of the above-entitled matter.

2. That the First Russian Insurance Company, Established in 1827, at all the times hereinafter mentioned, with the exceptions hereinafter noted, was a corporation, organized under the laws of the State of Russia, to transact the business of insurance, and was authorized by compliance with the requirements of the laws of the State of New York to transact such business in this State; that the said Insurance Company, as part of its compliance with the requirements of the laws of the State of New York, deposited with the Superintendent of Insurance as a fund out of which should be paid the claims of domestic creditors of said corporation, cash, securities and other items of value; that the First Russian Insurance Company, Established in 1827, possessed assets and items of value in the United States other than and in addition to the said fund deposited with the Superintendent of Insurance.

3. That heretofore and in the latter part of 1917 and the early part of 1918, or thereabouts, the said First Russian Insurance Company Established in 1827 by decree of the Russian State, and particularly by decree of the Russian State on the organization of the insurance business in the Russian Republic, a photostatic copy of a certified copy of which and a photostatic copy of a certified translation of which are attached hereto and made a part hereof as Exhibit A,

18 was dissolved and all of its right, title and interest and all the right, title and interest of all its stockholders in its property, including the deposit hereinafter mentioned, with the Superintendent of Insurance of the State of New York and the other assets of the First Russian Insurance Company established in 1827, in the United States, hereinafter mentioned, were confiscated and exappropriated by said Russian State.

4. That on or about August 8, 1925, pursuant to an order of the Supreme Court of the State of New York entered in the office of the Clerk of the County of New York on the 8th day of August

1925, as resettled by an order of said Court dated and entered the 11th day of September 1925, James A. Beha, as the Superintendent of Insurance of the State of New York, took possession of the property of the domesticated United States Branch of the First Russian Insurance Company Established in 1827, under Section 63 of the Insurance Law of the State of New York.

That subsequently pursuant to Section 63 of the Insurance Law of the State of New York and the aforesaid orders of the Supreme Court of the State of New York, James A. Beha, as Superintendent of Insurance of the State of New York, and his successor in office, George S. Van Schaick, proceeded to liquidate the business of the domesticated United States Branch of First Russian Insurance Company Established in 1827, and as a result thereof all domestic claims have been adjudicated and allowed leaving undisposed of certain foreign claims which arose in the conduct of the business outside of the United States.

19 That on August 24, 1934, there remained in the custody of George S. Van Schaick as Superintendent of Insurance of the State of New York, as liquidator of the domesticated United States Branch of First Russian Insurance Company Established in 1827, cash securities and other assets having a value of $1,170,783.36.

5. That among the persons who have filed against the fund now in the possession of the defendant herein claims arising out of the foreign business of the First Russian Insurance Company Established in 1827, are Messrs. Campbell and Whipp, Attorneys at Law, residing in the City of New York, and Dr. M. Imchanitzky, residing in the City of New York. That the claims of these persons have been allowed in the sum of $128,010.58 and $38,403.17, respectively, and that orders were made by the Supreme Court of New York, New York County, Special Term, on February 26, 1934, copies of which are attached hereto and made a part hereof as Exhibits B and C, respectively, instructing the defendant herein to pay these respective sums to the claimants with interest thereon from June 16, 1931. That on appeal by the said George S. Van Schaick, Superintendent of Insurance, the aforesaid orders of the Supreme Court of New York, New York County, Special Term, were affirmed by orders of the Supreme Court of New York, Appellate Division, First Department, on June 15, 1934. That from the aforesaid orders of the Supreme Court of New York, Appellate Division, First Department, appeals were taken by said Superintendent of In-

20 surance to the Court of Appeals of New York and on December 4, 1934, the Court of Appeals rendered decisions without opinion affirming the aforesaid orders of the Supreme Court of New York, Appellate Division, First Department.

6. That orders on the remittiturs of the Court of Appeals may be served upon the defendant immediately or within the next few days, which will require the defendant to pay out to the claimants above described, Messrs. Campbell and Whipp and Dr. M. Imchanitzky, the

sums of $128,010.58 and $38,403.17 out of the said cash, securities, and other assets referred to in the complaint herein.

7. That if these payments be made the said cash, securities, and other assets in the hands of the defendant herein will be correspondingly diminished before an adjudication of the rights of the complainant herein to these funds can be determined by this Court.

8. That payment of the aforesaid sums of $128,010.58 and $38,403.17 out of the said cash, securities, and other assets referred to in the complaint herein will cause great, immediate, and irreparable injury and damage to the complainant herein by reason of the fact that the said cash, securities, and other assets will be diminished, by reason of the fact that the defendant herein, an officer of the State of New York, cannot be required to respond in damages to the complainant for payments made pursuant to an order of the Supreme Court of the State of New York.

21 9. That this Court in the case of United States v. Bank of New York and Trust Company and the case of United States v. President and Directors of Manhattan Company by orders to show cause dated August 22, 1934, and August 25, 1934, respectively, granted temporary restraining orders restraining and enjoining the defendants therein from paying out the funds there involved.

10. That the aforesaid restraining orders in the aforesaid cases are now in complete force and effect.

11. That this Court, on November 30, 1934, filed an opinion in the case of United States v. Bank of New York and Trust Company and in the case of United States v. President and Directors of Manhattan Company dismissing the complaints and denying motions of the complainant for injunctions pendente lite upon which opinion orders of this Court have not yet been entered.

12. That upon the presentation for settlement of orders in the aforesaid cases dismissing the complaints and denying motions of the complainant for injunctions pendente lite the complainant in the aforesaid cases will present orders continuing the aforesaid restraining orders now in force pending the determination of the complainant to take an appeal and pending the determination of such appeal.

13. That in order to enable this Court to adjudicate the rights of the complainant to the cash, securities, and other assets re-

22 referred to in the complaint, and to effectively exercise its jurisdiction and enforce its judgment it is necessary and proper that the aforesaid cash, securities and other assets remain in possession of the defendant pending the adjudication by this Court of the rights of the complainant.

14. That no application has been made to any other Court or Judge in this suit for the relief herein prayed or for similar relief.

Wherefore, deponent makes this affidavit in support of an order to show cause why the defendant should not be enjoined, and restrained permanently and pending the determination of this suit from paying out or distributing to any one other than this complain-

ant any part of the aforesaid cash, securities and other assets in the possession of the defendant.

LEON E. SPENCER.

Sworn to before me this 7th day of December 1934.

JOHN B. MERRETT,
*Notary Public.*

23 *Exhibit A—Certified copy of Russian text of a Decree of the Russian State on the organization of the insurance business in the Russian Republic, attached to affidavit, verified December 7, 1934*

CERTIFIED TRANSLATION OF EXHIBIT A, ATTACHED TO AFFIDAVIT, VERIFIED DECEMBER 7, 1934

Source: Collection of Decrees and Orders on National Economy (October 25, 1918—March 15, 1919) Volume Two. Published by the Supreme Soviet of National Economy of the Russian Socialist Federated Soviet Republic, Moscow, 1920. Pages 720, 721

Decree of the Soviet of People's Commissars 603. On the organization of the Insurance business in the Russian Republic.

(1) Insurance in all its forms, such as: Fire insurance, insurance on shipments, life insurance, accident insurance, hail insurance, livestock insurance, insurance against failure of crops, etc., is hereby proclaimed as a State monopoly.

NOTE.—Mutual insurance of movable goods and merchandise by the cooperative organizations is conducted on a special basis.

(2) All private insurance companies and organizations (stock and share holding, also mutual) upon issuance of this decree are
24 subject to liquidation; former rural [1] (People's Soviet) and municipal mutual insurance organizations operating within the boundaries of the Russian Republic are hereby proclaimed the property of the Russian Socialist Federated Soviet Republic.

(3) For the immediate organization of the insurance business and for the liquidation of parts of insurance institutions, which have become the property of the Russian Socialist Federated Soviet Republic, a Commission is established under the Supreme Soviet of National Economy, consisting of representatives of the Supreme Soviet of National Economy, the People's Commissariats of Commerce and Industry, Interior Affairs, the Commissar of Insurance and Fire Prevention, Finances, Labor, and State Control, and of Soviet Insurance Organizations (People's Soviet and Municipal Mutual).

NOTE.—The same Commission is charged with the liquidating of private insurance organizations, all property and assets of which, disclosed at the time of their liquidation, become the property of the Russian Socialist Federated Soviet Republic.

[1] zemskie.

(4) The above-mentioned reorganization and liquidation of existing insurance organizations and institutions shall be accomplished not later than the first day of April 1919.

(5) The Commissariat of Insurance and Fire Prevention, together with all its institutions, is reorganized into the Insurance Department of the Supreme Soviet of National Economy. The
25 matter of fire prevention is transferred to the Supreme Soviet of National Economy.

(6) No Soviet properties and enterprises are subject to insurance.

(7) Life insurance with the State Savings Banks is conducted upon the former basis.

(8) The present decree comes into force on the day of its publication.

(Signed) V. ULYANOV (LENIN)
*Chairman of the Soviet of People's Commissars.*
V. BONCH-BRUEVICH
*Administrator of Affairs of the Soviet of People's Commissars.*

"IZVESTIYA of the All-Russian Central Executive Committee of Soviets", December 1, 1918, No. 263.)

[Translator's Note.] I hereby certify that the above translation is conformable with the attached original to the best of my knowledge.

IGNATIUS JAWNEY,
*Principal Translator, Department of State.*

Appointed Translator, January 1928.

Russian.
Tr.IJ:MW:SS.

26 *Exhibit B attached to affidavit verified December 7, 1934*

At a Special Term, Part 1, of the Supreme Court, held in and for the County of New York, at the County Court House in the Borough of Manhattan of the City of New York, on the 26th day of February 1934

Present: Hon. Richard P. Lydon, Justice.

Co. Clerk's No. 26150—1925

IN THE MATTER OF THE APPLICATION OF THE PEOPLE OF THE STATE OF New York, by James A. Beha, Superintendent of Insurance of the State of New York, for an order to take possession of the property and conserve the assets for the benefit of the creditors of the First Russian Insurance Company, established in 1827, and the interests of its policyholders, creditors, stockholders, and the public

MATTER OF PETITION OF FREDERICK B. CAMPBELL AND CAMPBELL & Whipp for an order adjudging and enforcing attorneys' lien and directing payment of claim

27 Petitioners, by notice of motion dated December 12, 1933, having moved for an order, decision and judgment (a) con-

firming the report and findings of fact of the referee herein as to so much thereof as relates to the petitioners' claim for compensation based upon express contract; (b) making conclusions of law thereon; and (c) ordering, adjudging, and decreeing that the respondent Superintendent of Insurance as liquidator of First Russian Insurance Company, Established in 1827, pay to the petitioners as copartners under the firm name of Campbell & Whipp the sum of One hundred twenty-eight thousand ten and 58/100 dollars ($128,010.58), together with interest thereon from June 16, 1931, to date of payment;

And Mr. Justice Glennon, before whom the matter was pending, having referred further proceedings to this court, and the matter having come on to be heard on January 10, 1934, to which date the matter had previously been adjourned by the court;

And after hearing Frederick B. Campbell, Esq., on behalf of the petitioners in support of the motion, and after hearing in opposition thereto John M. Downes, Esq., of counsel for respondent, the Superintendent of Insurance as liquidator of the above-named Company, and Samson Selig, Esq., G. Frank Dougherty, Esq., and Borris M. Komar, Esq., of counsel, respectively, for respondent creditors; and the Court, after due deliberation, having filed its opinion;

28 Now, therefore, upon reading the following papers heretofore filed herein, namely, the notice of motion herein dated December 12, 1933, and proof of service thereof; the petition herein, verified February 25, 1932; the answer and supplementary answer of the Superintendent of Insurance as liquidator verified, respectively, March 4, 1932, and March 10, 1932; the answering affidavits of Jacob Jolles, verified March 4, 1932, of Borris M. Komar, verified March 3, 1932, of H. H. Nordlinger, verified March 2, 1932, of James A. Tillman, verified March 2, 1932, of Isador Witkind, verified March 3, 1932; the order of Special Term, Part 1, of this court (Mr. Justice Glennon), dated July 20, 1932, and entered on August 4, 1932, referring the matter to Hyman Bushel, Esq., to take testimony and report as to the facts, in aid of the decision of the motion; and upon reading so much as relates to the petitioners' claim for compensation based upon express contract, of the report of said referee dated October 10, 1933, and filed with the Clerk of Special Term, Part 1, on October 11, 1933, together with the referee's findings of fact and the testimony and exhibits filed with said report and made a part thereof, which report, findings, and exhibits are filed herein; and upon reading and filing the stipulation dated December 11, 1933.

And on motion of the petitioners, it is hereby

Ordered, adjudged, and decreed that the Superintendent of Insurance as liquidator of First Russian Insurance Company, Established in 1827, pay to the petitioners, Frederick B.

29 Campbell and Paul C. Whipp as copartners under the firm

name of Campbell & Whipp, the sum of One Hundred twenty-eight thousand ten and 58/100 dollars ($128,010.58), together with interest thereon from June 16, 1931, to date of payment.

Enter:

R. P. L.,
J. S. C.

30 *Exhibit C attached to affidavit verified December 7, 1934*

At a Special Term, Part 1, of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, Borough of Manhattan, City of New York, on the 26th day of February, 1934

Present: Hon. Richard P. Lydon, Justice.

County Clerk's No. 26150, 1925

IN THE MATTER OF THE APPLICATION OF THE PEOPLE OF THE STATE of New York, by James A. Beha, Superintendent of Insurance of the State of New York, for an order to take possession of the property and conserve the assets for the benefit of the creditors of the First Russian Insurance Company, Established in 1827, and the interests of its policyholders, creditors, stockholders, and the public.

MATTER OF PETITION OF MICHAEL IMCHANITZKY, FOR AN ORDER Directing payment of claim under assignment

Michael Imchanitzky, having duly filed with this court a
31 petition verified February 26th, 1932, praying for an order authorizing and directing the Superintendent of Insurance of the State of New York, as Liquidator of the First Russian Insurance Company, Established in 1827, to pay to said petitioner the sum of $38,702.06, under and in pursuance of the assignment thereof referred to in the said petition; and by notice of motion dated February 26th, 1932, directed to all the parties appearing herein, the matter having been brought before Hon. Edward J. Glennon, one of the Justices of this court, holding Special Term, Part 1, of this court, on March 5th, 1932, and Mr. Justice Glennon, having on July 29th, 1932, made an order herein referring this matter to Hyman Bushel, Esq., as Referee, to take testimony and to report as to the facts, and that pending such report, decision on the motion be held in abeyance, and the said Hyman Bushel, Esq., Referee, having heretofore and on or about October 10th, 1933, duly filed his report in pursuance of the order last above referred to, which said report bears date October 10th, 1933; and Mr. Justice Glennon having been designated to sit in the Appellate Division of this court,

said motion was duly referred to the Justice presiding in Special Term Part I of this court, and the said motion having duly come on to be heard before me on the 10th day of January 1934.

Now, upon reading the order of Mr. Justice Glennon, made and entered in this proceeding on July 29th, 1932, and the papers upon which the said order was entered (to wit: the said petition of
32 Michael Imchanitzky, verified February 26th, 1932, the affidavit of Frederick B. Campbell, sworn to February 26th, 1932, the said notice of motion dated February 26th, 1932, with due proof of service thereof, upon all parties appearing herein, the answer of the Superintendent of Insurance of the State of New York, as Liquidator, verified March 4th, 1932, and the supplemental answer of the said Superintendent of Insurance of the State of New York, as said Liquidator, verified March 10th, 1932, the affidavit of Borris M. Komar, sworn to March 3rd, 1932, the affidavit of Jacob Jolles, sworn to March 4th, 1932, the affidavit of Isidore Witkind, sworn to March 3rd, 1932, the affidavit of James A. Tillman, sworn to March 3rd, 1932, and the affidavit of H. H. Nordlinger, sworn to March 2nd, 1932) the report of Hon. Hyman Bushel, Referee, dated October 10th, 1933, together with the said Referee's findings of fact and the testimony and exhibits filed with said report and made a part thereof, and upon reading and filing the exceptions to the said Referee's report, dated January 9th, 1934, filed by John M. Downes, Esq., attorney for the Superintendent of Insurance, as Liquidator of the First Russian Insurance Company, Established in 1827, and after hearing George Frankenthaler, Esq. (Alexander Bicks, Esq. of counsel) attorney for the petitioner in support of said motion, and John M. Downes, Esq., attorney for the Superintendent of Insurance, Borris M. Komar, Esq., attorney for Andrew Ditmar, et al., Samson Selig, Esq., attorney for Kaplan, et al., Engelhard Pollak, Pitcher & Stern, Esqs. (G. Frank Dougherty, Esq. of counsel),
33 attorneys for Dougherty, et al., in opposition to said motion, and due deliberation having been had thereon, and the opinion of the court having been filed, it is hereby

Ordered, adjudged, and decreed, that the prayer of the petitioner herein, contained in his said petition verified February 26th, 1932, be and the same hereby is in all respects granted, and it is hereby further

Ordered, adjudged, and decreed that the Superintendent of Insurance, as Liquidator of the First Russian Insurance Company, Established in 1827, be and he hereby is authorized and directed to pay to the petitioner herein, the sum of $38,403.17, with interest thereon from June 16th, 1931, to the date of payment.

Enter:

R. P. L.,
J. S. C.

34 In United States District Court, Southern District of New York

[Title omitted.]

*Defendant's order to show cause to dismiss complaint*

On the annexed affidavit of Alfred L. Green, sworn to on the 8th day of December 1934, and upon the bill of complaint herein and the bill of particulars thereof,

It is ordered that the complainant be and appear before this Court at a stated term thereof for the hearing of motions, to be held on the 11th day of December 1934, in Room 235 in the Old Post Office Building, in the City, County, and Southern District of New York, Borough of Manhattan, at the hour of 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, then and there to show cause, if any it has, why the complaint

35 herein should not be dismissed, upon the ground that such complaint fails to state facts sufficient to constitute a cause of action, and why the defendant herein should not have such other and further relief to which he may be entitled.

Let service hereof be made upon the complainant by service upon the United States Attorney, or an Assistant United States Attorney, in and for the Southern District of New York, of a copy, which need not be certified, on or before December 10, 1934.

Dated, New York, N. Y., December 8th, 1934.

HENRY W. GODDARD,
*U. S. D. J.*

36 In United States District Court, Southern District of New York

[Title omitted.]

*Affidavit attached to defendant's order to show cause*

SOUTHERN DISTRICT OF NEW YORK,
*State of New York, County of New York, ss.:*

Alfred L. Green, being duly sworn, deposes and says that he is an attorney at law associated with John M. Downes, Esq., attorney for the Superintendent of Insurance of the State of New York, as liquidator of the above-named company, and that he is familiar with all the proceedings had and actions taken in the liquidation of the First Russian Insurance Company, Established in 1827.

In and by the bill of complaint herein, the complainant

37 claims title to certain funds in the possession and custody of the defendant as Superintendent of Insurance of the State of New York, as liquidator of the domesticated United States Branch of the First Russian Insurance Company, Established in 1827. Such claim is made under certain alleged assignments from the Russian

State, dated on or about November 16, 1933, as referred to in paragraph numbered "7" of the bill of complaint herein.

There is now pending before this Court a motion brought on by an order to show cause, dated December 7, 1934, returnable on December 11, 1934. Said motion is by the complainant for an injunction enjoining and restraining the defendant from paying out or distributing to anyone other than said complainant any part of the funds in the hands of this defendant.

This Court recently had before it the cases of United States v. Bank of New York and Trust Company and United States v. President and Directors of Manhattan Company. Both of said cases were almost identically the same as the instant action and are based upon the same claim of title by the complainant. In said actions motions by the defendants to discuss the complaints and motions by the complainant for injunctions were heard at the same time, so that the entire matter was at once brought before the Court for its determination.

It is desirable, therefore, that this Court, on the return date of the complainant's motion for an injunction, should also have before it the defendant's motion to dismiss the complaint so that
38 the Court may decide the entire controversy, and avoid the necessity of motions being made at a later date, which motions would bring up the same questions of law.

The reason why the within order to show cause is sought is because the complainant's motion for an injunction is returnable on December 11, 1934, and there is not sufficient time to the defendant to bring on a motion to dismiss the complaint by the usual five days' notice.

No application has been made to any Court or Judge for the relief prayed for herein, or for any similar relief.

ALFRED L. GREEN.

Sworn to before me, this 8th day of December, 1934.

ELIZABETH SAWYER,

*Notary Public, Kings County, N. Y. Kings County Clerk's No. 641. N. Y. County Clerk's No. 1882. Term expires March 30, 1936.*

39 In United States District Court, Southern District of New York

[Title omitted.]

Bill of particulars

The complainant, in response to the defendant's notice of motion for an order requiring the complainant to serve upon defendant's attorney on or before December 10, 1934, the bill of particulars of the allegations of the bill of complaint, hereby states:

1. That the government or regimé in or of Russia, intended to be referred to by the term "State of Russia" in paragraph III of the complaint and by the term "Russian State" in paragraphs IV and VII of the complaint, is the government which has been recognized

by the United States, by its political departments as having been sovereign in Russia since 1917.

2. That the decrees of the Russian State referred to in
40 paragraph IV of the complaint are decrees published April 20, 1918, December 1, 1918, March 7, 1919, and March 5, 1921, copies and translations of which are hereto annexed and any other decrees which the complainant may offer as part of its proof in the event of a trial, upon giving reasonable notice to the solicitor for the defendant.

3. That the assignments referred to in paragraphs VII of the complaint are written assignments, photostatic copies of certified copies of which are annexed hereto, described as follows:

A. A written assignment by the State of Russia to the United States, dated August 25, 1933, signed by Serge Ughet as Russian Financial Attaché and Custodian of the property of the Russian Government in the United States, acting for and on behalf of the State of Russia.

B. An exchange of letters, dated November 16, 1933, between the President of the United States and Maxim Litvinoff, People's Commis'ar for Foreign Affairs, Union of Soviet Socialist Republics.

Dated. New York, N. Y., December 10, 1934.

MARTIN CONBOY,

*United States Attorney, Southern District of New York, Attorney for Complainant, Office & P. O. Address, U. S. Courts & P. O. Bldg., Borough of Manhattan, New York City.*

41 *Exhibit A—Certified copies of Russian text of decrees of the Russian State published April 20, 1918, December 1, 1918, March 7, 1919, and March 5, 1921, attached to bill of particulars*

CERTIFIED TRANSLATION OF RUSSIAN DECREE PUBLISHED APRIL 20, 1918

Source: Sobranie Uzakonenii I Pasporyazhenii Rabochego I Krestyanskogo Pravitelstva (Collection of Laws and Orders of the Worker's and Peasant's Government), 1917–1918, Nos. 1–80, Moscow, 1919

Translation

Decree of the Soviet of People's Commissars

420. Regarding the registration of stock certificates, bonds, and other interest-bearing securities.

(1) In pursuance of the decree of December 29, 1917, on the discontinuance of payments on coupons and dividends (Sobranie Uzakonenii I Rasporyazhenii Rabochego I Krestyanskogo Pravitelstva—Collection of Laws and Orders of the Worker's and Peasant's Government—No. 13, Article 185), the system of anonymous stock certificates and all kinds of other interest-bearing securities is abol-

ished and henceforth only name-bearing interest-bearing securities shall be valid.

NOTE.—Those state interest-bearing securities to which, by
42 special resolution of the Government, circulation has been accorded on a par with paper money, are not subject to the provisions of the present clause.

(2) In accordance therewith, there shall be introduced an obligatory registration of stock certificates, bonds, and all kinds of other interest-bearing securities, Russian and foreign, belonging not only to citizens of the Russian Soviet Republic, but also to foreign citizens residing in its boundaries.

(3) Each owner or holder of securities indicated in clause 1 must present them for registration in one of the offices or branches of the People's (State) Bank of the Russian Soviet Republic.

(4) On the securities presented in accordance with the preceding clause there shall be denoted by the State Bank, under its seal, the Christian name, patroynmic, surname, and address of their owners, which shall likewise be entered in the register of negotiable instruments.

(5) All branches of the People's (State) Bank and the State Savings Bank, all state and public institutions, as well as nonnationalized credit institutions, in which stock certificates and interest-bearing securities are kept for safe-keeping, for management, in pledge, as security, etc., must effect the registration of securities there located, recognizing as the owners thereof those physical and juridical persons in whose behalf and in whose name they are
43 entered. All this information relating to registration must be centered in the local branches of the People's (State) Bank.

NOTE.—Interest-bearing securities, found in safe deposit boxes, are considered as the property of the renters of the safe deposit boxes, if, in the safe deposit box itself, there is not found evidence to the contrary.

(6) The prohibition of the disposition of stock certificates, bonds, and other interest-bearing securities, set forth in the decree of December 29, 1917, shall retain its validity until the issuance of a law concerning the introduction of a system permitting the disposition of stock certificates and other interest-bearing securities.

Only owners of stock certificates and other interest-bearing securities, who have correctly and on time registered them, shall have a right to compensation, in the event of the nationalization of enterprises, in those amounts and on those conditions which shall be determined by the law regarding nationalization.

Likewise, only such owners of stock certificates shall have a right to a dividend after the payment thereof, suspended by the law of December 29, 1917, shall have been authorized.

(7) The presentation of stock certificates and other interest-bearing securities, on hand, must be preceded by the filing of applications. The form of these applications, the date of their filing, and further regulations, pertaining to the presentation of stock

44 certificates and to their registration, shall be determined by the People's Commissariat for Finance and shall be made known to the public.

(8) All stock certificates with respect to which the applications, indicated in clause 7, will not have been filed in time, shall be subject to become, without recompense, state property.

NOTE.—Owners and holders of stock certificates who have not carried out the instructions of the present decree shall be subject to imprisonment for a term of not less than one year.

Those guilty of performing fictitious transactions for the purpose of evading this decree shall be punished by imprisonment for a term of not less than two years.

(9) Annulled securities and stock certificates of confiscated enterprises are also subject to registration in order to guaranty the just interests of the holders.

(10) The registration of Russian interest-bearing securities, bonds, and stock certificates, private, public, and state, which are abroad, shall be effected regardless of whether they belong to Russian or foreign citizens; and for their registration it shall be obligatory to present them in the original to persons or institutions who shall be empowered by the appropriate diplomatic representatives of Russia abroad to keep state registers in the corresponding appropriate states and during periods which shall be established by the aforesaid diplomatic representatives.

45 Signed: President of the Soviet of People's Commissars, Vl. Ulyanov (Lenin). For the People's Commissar of Finance, I. Gukovski. President of the Supreme Soviet of National Economy, A. I. Rykov. In charge of the affairs of the Soviet of People's Commissars, Vl. Bonch-Bruevich. April 18/5, 1918.

Published in Izvestiya of the All-Russian Central Executive Committee of Soviets, April 20/7, 1918, No. 78.

Translator's Note: I hereby certify that the above translation is conformable with the attached original to the best of my knowledge.

IGNATIUS JAWNEY,
*Principal Translator, Department of State.*

Appointed Translator, January 1928.
Tr: IJ: MA: SS 9/27.

46 *Certified translation of Russian decree published December 1, 1918*

Source: Collection of Decrees and Orders on National Economy (October 25, 1918–March 15, 1919) Volume Two—Published by the Supreme Soviet of National Economy of the Russian Socialist Federated Soviet Republic, Moscow, 1920. Pages 720, 721

Decree of the Soviet of People's Commissars

603. On the organization of the insurance business in the Russian Republic.

(1) Insurance in all its forms, such as fire insurance, insurance on shipments, life insurance, accident insurance, hail insurance, live-stock insurance, insurance against failure of crops, etc., is hereby proclaimed as a State monopoly.

NOTE.—Mutual insurance of movable goods and merchandise by the cooperative organizations is conducted on a special basis.

(2) All private insurance companies and organizations (stock and share holding, also mutual) upon issuance of this decree are subject to liquidation; former rural [1] (People's Soviet) and municipal mutual insurance organizataions operating within the boundaries of the Russian Republic are hereby proclaimed the property of the Russian Socialist Federated Soviet Republic.

47 (3) For the immediate organization of the insurance business and for the liquidation of parts of insurance institutions, which have become the property of the Russian Socialist Federated Soviet Republic, a Commission is established under the Supreme Soviet of National Economy, consisting of representatives of the Supreme Soviet of National Economy, the People's Commissariats of Commerce and Industry, Interior Affairs, the Commissar of Insurance and Fire Prevention, Finances, Labor, and State Control, and of Soviet Insurance Organizations (People's Soviet and Municipal Mutual).

NOTE.—The same Commission is charged with the liquidating of private insurance organizations, all property and assets of which, disclosed at the time of their liquidation, become the property of the Russian Socialist Federated Soviet Republic.

(4) The above-mentioned reorganization and liquidation of existing insurance organizations and institutions shall be accomplished, not later than the first day of April 1919.

(5) The Commissariat of Insurance and Fire Prevention, together with all its institutions, is reorganized into the Insurance Department of the Supreme Soviet of National Economy. The matter of fire prevention is transferred to the Supreme Soviet of National Economy.

(6) No Soviet properties and enterprises are subject to insurance.

48 (7) Life insurance with the State Savings Banks is conducted upon the former basis.

(8) The present decree comes into force on the day of its publication.

(Signed) V. ULYANOV (LENIN),
*Chairman of the Soviet of People's Commissars.*

V. BONCH-BRUEVICH,
*Administrator of Affairs of the Soviet of People's Commissars.*

("Izvestiya of the All-Russian Central Executive Committee of Soviets", December 1, 1918, No. 263.)

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[1] zemskie.

[Translator's Note.] I hereby certify that the above translation is conformable with the attached original to the best of my knowledge.

Ignatius Jawney
IGNATIUS JAWNEY,
*Principal Translator, Department of State.*

Appointed Translator, January 1928.

Russian.
Tr. IJ : MW : SS.

49 *Certified translation of Russian decree published March 7, 1919*

Translation

Source: Sobranie Uzakonenii i Rasporyazhenii Rabochego i Krestyanskogo Pravitelstva (Collection of Laws and Orders of the Worker's and Peasant's Government), 1919, Pages 133–134

Decree of the Soviet of People's Commissars

108. On the liquidation of obligations of state enterprises.

In view of the fact that all state (nationalized, sequestrated, former governmental, etc.) enterprises, on the basis of the decree of the Soviet of People's Commissars regarding the financing of enterprises (Collection of Laws, 1919, No. 10–11, Art. 107), beginning with March 1 of this year, are being supplied with necessary funds exclusively through separate budget financing, the Soviet of People's Commissars decrees:

(1) Stock-certificates and shares of joint stock companies and partnerships, whose enterprises have been either nationalized or sequestrated, are annulled even though such enterprises have not yet been placed under the direction of governmental administrations and have remained in the use of former owners without payment of rent.

(2) State enterprises are freed from the payment of all
50 debts to private persons and enterprises which have arisen prior to the nationalization of these enterprises, including payments on bond loans, with the exception only of wages due to their workers and employees.

NOTE.—Former governmental plants which, as the result of the October revolution, have been placed at the disposition of the Worker's-Peasant's Government, are freed from the payment of those debts only which have arisen before October 25, 1917.

(3) The debts of State enterprises due other State enterprises and institutions, the People's Bank of the R. S. F. S. R. and all former private credit institutions which have amalgamated with it, and also all kinds of State and local taxes in arrears, are annulled and are not subject to collection.

(4) Cash and capital belonging to State enterprises, in credit institutions, shall be taken from their administration and shall be transferred to the income of the Treasury, with the exception of sums paid out to an enterprise under budget estimates for the first half year of 1919, and with the exception of construction credits for 1918.

(5) Obligations of third persons with respect to State enterprises retain their validity, and the appropriate head office, center, or section of the Supreme Soviet of National Economy, shall be given the right to repudiate agreements concluded by a former owner
51 of an enterprise before its nationalization or before its actual transfer to the direction of a governmental administration.

(6) A detailed instruction concerning the putting into effect of the present decree shall be completed within a week's time by the Supreme Soviet of National Economy together with the People's Commissariats of State Control and of Finance.

Signed:

V. Ulyanov (Lenin),
*President of the Soviet of People's Commissars.*

V. Bonch-Bruevich,
*In charge of the Affairs of the Soviet of People's Commissars.*

L. Fotieva,
*Secretary of the Soviet of People's Commissars.*

March 4, 1919.

Published in Izvestiya of the Central Executive Committee, March 7, 1919.. No. 52.

[Translator's Note.] I hereby certify that the above translation is conformable with the attached original to the best of my knowledge.

Ignatius Jawney,
Ignatius Jawney,
*Principal Translator, Department of State.*

Appointed Translator, January 1928.

Tr: IJ: AT: SS.

52 *Certified translation of Russian decree published March 5, 1921*

Source: Sobranie Uzakonenii i Rasporyazhenii Rabochego i Krestyanskogo Pravitelstva (Collection of Decrees and Orders of the Worker's and Peasant's Government). Publication of the People's Commissariat for Justice, March 18, 1921, No. 18, 1921, No. 18, Article 111, Page 106.

Translation

111. Regarding the confiscation of all movable property of citizens who have fled beyond the borders of the Republic or who have been in hiding up to the present time.

The Soviet of People's Commissars has resolved the following as supplementary to its decree concerning property without an owner (Collection of Decrees and Orders, 1920, No. 87, Article 442):

1. All movable property, regardless of what it consisted of or where it was found, of citizens who have fled beyond the borders of the Republic or of citizens who have been in hiding up to the present time, is declared the property of the R. S. F. S. R.

2. Of said property all articles of art or antiquity which possess a particular artistic or historic value shall be given over by order of the People's Commissariat for Public Instruction to museums, universities, or other educational institutions; all the remaining property of such citizens shall be converted into a merchandise fund of the Republic, and shall be placed at the disposition of the
53 People's Commissariat for Foreign Trade and other People's Commissariats in accordance with their respective jurisdictions.

3. In execution of the present resolution a detailed instruction shall be issued to the People's Commissariats for Public Instruction and for Foreign Trade.

(Signed:)

V. ULYANOV (LENIN),
*President of the Soviet of People's Commissars.*

N. GORBUNOV,
*Administrator of Affairs of the Soviet of People's Commissars.*

L. FOTIEVA,
*Secretary of the Soviet of People's Commissars.*

November 19, 1920.

Published in Izvestiya of the All Russian Central Executive Committee of Soviets, No. 49, March 5, 1921.

[Translator's note.] I hereby certify that the above translation is conformable with the attached original to the best of my knowledge.

Ignatius Jawney
IGNATIUS JAWNEY,
*Principal Translator, Department of State.*

Appointed Translator, January 1928.
Russian.
Tr. IJ.

54 *Exhibit B—Certified copy of assignment, dated August 25, 1933, attached to bill of particulars*

Know all men by these presents that I, the undersigned, Serge Ughet, as Russian Financial Attache and Custodian of the Property of the Russian Government in the United States, acting for and on behalf of the State of Russia, for and in consideration of good and valuable considerations by the United States of America to the State of Russia paid, the receipt of which is hereby acknowledged, have assigned, transferred, set over and delivered and by these presents

do assign, transfer, set over and deliver unto the United States of America, its successors and assigns, to its and their own proper use and benefit forever, all property, of whatsoever nature and description, in the United States belonging to the State of Russia, together with all claims and demands of every nature and description, whether legal or equitable, existing in favor of the State of Russia in the United States, or against any person, firm, or corporation in the United States, or arising out of any contract or agreement or transaction in the United States or otherwise, including therein among others the following property and claims:

(1) Claim for approximately $4,976,722.78 with interest for a balance of the Russian Government with the Guaranty Trust Company of New York.

(2) Claim for approximately $15,000.00 against the Guaranty Trust Company of New York arising out of a contract with the Morton Truck and Tractor Company.

55 (3) Claim for approximately $46,584.18 balance on deposit with the New York Trust Company on account of a bond issue of the Vladikavkas Railway Company.

(4) Claim for approximately $11,680.00 against the said New York Trust Company on account of a balance of a payment made by the Russian Financial Attache on or about September 10, 1918, in connection with the same bonds.

(5) Claim for approximately $140,000.00 against the National City Bank of New York on account of a payment made to the said bank regarding certain shoes ordered for working men and employees of the Vladikavkas Railway Company.

(6) Claim for approximately $1,050,000.00 with interest against the Curtiss Aeroplane & Motor Company.

(7) Claim for approximately $384,118.07 with interest for moneys due from the Canadian Pacific Railway Company under contracts with the Russian Government.

(8) Claim for approximately $1,412,532.35 with interest on account of the amounts due by the United States Shipping Board for the requisition of Hulls Nos. 6 and 7 of the Russian Volunteer Fleet, action in connection with which is now pending in the United States Court of Claims No. 69 A.

56 (9) Claim for the sum of approximately $218,750.00 originally deposited with the Guaranty Trust Company as escrow money on Hull No. 6 under the contract for the purchase of said hull by the said Russian Volunteer Fleet.

(10) Claim for the sum of approximately $23,643.75 on account of a balance due by the United States Shipping Board in connection with the charter of certain steamers of the said Russian Volunteer Fleet.

The foregoing list of claims is not intended to be exclusive. It is the intention of this assignment to transfer to the United States of America all property, rights, and claims having a situs in the

United States formerly belonging to either the Imperial Russian Government or the Provisional Russian Government.

Excluding from this assignment, however, the right, title, and interest of the said State of Russia in and to the claim, demand or cause of action involved in the pending suit in equity in the United States District Court for the Southern District of New York, No. E 46-6, entitled "State of Russia, plaintiff, against Bankers Trust Company and National City Bank of New York, defendants."

IN WITNESS WHEREOF, the said Serge Ughet as Russian Financial Attache and Custodian of the property of the Russian Government in the United States, acting for and on behalf of the State of
57 Russia, has hereunto set his hand and seal this 25th day of August 1933.

(Signed) SERGE UGHET,
*As Russian Financial Attache and Custodian of the property of the Russian Government in the United States, acting for and on behalf of the State of Russia.*

Seal: Financial Attache to the Russian Embassy in Washington.

*Exhibit C—Certified copy of exchange of letters, dated November 16, 1933, attached to bill of particulars*

WASHINGTON, *November 16, 1933.*

MY DEAR MR. PRESIDENT: Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of
58 Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russia Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of the Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claim with respect to:

(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its
59 nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof.

I am, my dear Mr. President,
Very sincerely yours,

MAXIM M. LITVINOFF,
*People's Commissar for Foreign Affairs,*
*Union of Soviet Socialist Republics.*

Mr. FRANKLIN D. ROOSEVELT,
*President of the United States of America,*
*The White House.*

THE WHITE HOUSE,
*Washington, November 16, 1933.*

MY DEAR MR. LITVINOV: I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

"The Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any
60 decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

"The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above, not to make any claim with respect to:

"(a) judgments rendered or that may be rendered by American courts insofar as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

"(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or
61 its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof."

I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or

that may be found to be due; the Government of the Union of Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

I am, my dear Mr. Litvinov,

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

Mr. MAXIM M. LITVINOV,
*People's Commissar for Foreign Affairs,*
*Union of Soviet Socialist Republics.*

62 In United States District Court, Southern District of New York

[Title omitted.]

*Affidavit of John M. Downes, in opposition to motion by complainant for injunction pendente lite*

STATE OF NEW YORK,
*County of New York, Southern District of New York, ss:*

John M. Downes, being duly sworn, deposes and says:

1. That he is the attorney for the defendant George S. Van Schaick, Superintendent of Insurance of the State of New York, as liquidator of the First Russian Insurance Company Established in 1827, and that he is familiar with all of the affairs in the United States of the said First Russian Insurance Company Established in 1827.

63 2. That in or about the year 1907 the said First Russian Insurance Company Established in 1827 was admitted into and authorized to transact in the State of New York and in other states of the United States the business of fire insurance. From 1907 until shortly prior to 1925 the said Company continued to transact such business of fire insurance in the State of New York and in other States of the United States under annual license from the Superintendent of Insurance of the State of New York and the Insurance Departments of other States. Pursuant to the law of the State of New York (Insurance Law, Section 27), the funds or capital of the said Company in the United States as used in the transaction of its United States business were held by the Insurance Departments of New York and Ohio and by the Bankers Trust Company of New York as the Company's substituted trustee, the funds so held being held under the statutory trust for the Company's policyholders and creditors in the United States, and subject thereto for the Company itself.

3. That by order of the Supreme Court of the State of New York, New York County, dated August 8, 1925, and resettled September 11, 1925, a copy of which is hereto annexed and made a part hereof marked Exhibit "A", the Superintendent of Insurance of the State of New York was ordered and directed forthwith to take possession

of the property and conserve the assets in the United States of America of the said First Russian Insurance Company Established in 1827 and retain possession and conserve such assets until
64 the further order of the Supreme Court. Thereafter, under the orders and directions of the said New York Supreme Court, the Superintendent of Insurance of the State of New York, as liquidator of the said First Russian Insurance Company Established in 1827, entered into possession of the United States assets of the said Company and investigated, ascertained, fixed and determined the claims of policyholders and creditors in the United States of the said First Russian Insurance Company Established in 1827, and paid all such claims which were found to be valid. There then remained a substantial surplus of funds belonging to the said First Russian Insurance Company Established in 1827 concerning the disposition of which there ensued a long litigation in the Courts of the State of New York. Eventually, the New York Court of Appeals by its decision, reported in 255 N. Y. 415, directed that such surplus funds remaining after payment of domestic policyholders and creditors of said First Russian Insurance Company Established in 1827 should be applied by the Superintendent of Insurance to the liquidation and payment of all valid claims against the said First Russian Insurance Company arising from business transacted by the said Company outside of the United States, and that any surplus then remaining of the funds of the said First Russian Insurance Company should be made available for foreign attaching creditors, and that any further surplus then remaining should be paid and delivered to the surviving directors of the said First Russian Insurance Company Established in 1827. On June 16, 1931, the New York
65 Supreme Court made an order upon the remittitur of the New York Court of Appeals, a copy of which is hereunto attached and made a part hereof marked Exhibit "B", which said order made the order and judgment of the Court of Appeals the order and judgment of the New York Supreme Court.

4. That the Superintendent of Insurance of the State of New York thereafter pursuant to the said decision of the New York Court of Appeals, as reported in 255 N. Y. 415, and pursuant to the said order upon the remittitur of the New York Supreme Court, proceeded to determine the claims of foreign creditors of the said First Russian Insurance Company Established in 1827 as filed with the said Superintendent of Insurance, as liquidator as aforesaid. Certain of said foreign claims have been allowed by the said Superintendent of Insurance, as liquidator, and certain payments have been made on account of such claims as allowed. Other foreign claims against the said First Russian Insurance Company Established in 1827 have been disallowed by the Superintendent of Insurance and such disallowed claims are now being litigated before Honorable Maldwin Fertig, as Referee appointed by the New York Supreme Court.

5. That during all the proceedings in the State Courts with reference to the affairs of the said First Russian Insurance Company Established in 1827, and prior to the institution of any of said proceedings, the said First Russian Insurance Company Established in 1827 has been represented in the United States by Messrs.
66 Campbell & Whipp, as its United States attorneys and counsel, and by Dr. Michael Imchanitzky, as its Russian counsel. Subsequent to the said decision of the New York Court of Appeals, as reported in 255 N. Y. 415, the said firm of Campbell & Whipp, and the said Michael Imchanitzky respectively filed claims with the Superintendent of Insurance, as liquidator of the said First Russian Insurance Company Established in 1827 for their services rendered to and on behalf of the said Company, such services being based upon certain written contracts of retainer and assignments of so much of the United States assets of the said Company as would cover their agreed fees respectively executed in May 1923, and further in the case of the said firm of Campbell & Whipp upon a claim of an attorney's lien to the extent of their agreed fees upon the funds in the United States of the said First Russian Insurance Company, the said firm, even prior to the liquidation order having brought suits on behalf of said First Russian Company to recover its surplus funds remaining after payment of United States policyholders and creditors. Pending final decision upon said claims, the New York Supreme Court by its order made and entered May 13, 1932, a copy of which order is hereunto attached and made a part hereof marked Exhibit "C", among other things

"Ordered, adjudged and decreed * * * that should the applications of Michael Imchanitzky, Esq., and Messrs Campbell &
67 Whipp, now pending undecided in this Court, result ultimately in decisions granting in whole or in part the respective reliefs prayed for in said applications, then and in such case or cases the said balance of surplus assets, amounting to $1,149,630.96, shall be subject to deduction therefrom of any amount or amounts which may be hereafter awarded or directed to be paid as a result of said applications."

Thereafter, the New York Supreme Court by orders dated respectively February 26, 1934, copies of which are attached as Exhibits to the moving affidavit herein of Leon E. Spencer, sworn to December 7, 1934, ordered and directed that the claims of the said Campbell & Whipp and the said Michael Imchanitzky be allowed and paid. The said orders of the New York Supreme Court were thereafter affirmed by orders of the Appellate Division, First Department, dated June 15, 1934. The said orders of the Appellate Division were thereafter affirmed on December 5, 1934 by the New York Court of Appeals, and on December 7, 1934 the orders and judgments of affirmance of the New York Court of Appeals were respectively made the orders and judgments of the New York Supreme Court. Attached hereto and marked Exhibits "D" and "E" respectively

are copies of the said orders of the New York Supreme Court entered upon the respective remittiturs from the New York Court of Appeals. The order and judgment in favor of Messrs. Campbell & Whipp directs payment by the New York Superintendent of Insurance, as liquidator of the said First Russian Insurance Com-
68 pany Established in 1827 of the sum of $128,010.58 together with interest thereon from June 16, 1931 to date of payment. The order and judgment in favor of Michael Imchanitzky directs payment by the New York Superintendent of Insurance, as liquidator of the said First Russian Insurance Company Established in 1827, of the sum of $38,403.17 together with interest thereon from June 16, 1931 to the date of payment.

6. The defendant respectfully submits that the motion for an injunction pendente lite should be denied:

(a) For the reason that the complaint fails to state a cause of action, as has been decided in a similar case by U. S. District Judge Coxe.

(b) For the reason that even assuming that it could be held that the complaint states a cause of action the judgments in favor of the said Campbell & Whipp and Michael Imchanitzky respectively would have to be paid as they are based on assignments and an attorneys' lien accruing long prior to the recognition of Soviet Russia by the United States and the alleged assignment by Commissioner Litvinoff to the United States. In the event that any injunction pendente lite be granted, it should expressly except the payment of the said judgment claims of Campbell & Whipp and Michael Imchanitzky.

(c) For the reason that the said judgments in favor of
69 Campbell & Whipp and Michael Imchanitzky respectively are carrying interest at the rate of six per cent (6%) until the date of payment, and such interest charges are unnecessarily depleting the estate in the custody of the Superintendent of Insurance.

JOHN M. DOWNES.

Sworn to before me this 10 day of December 1934.

ELIZABETH SAWYER,
*Notary Public, Kings County, N. Y. Kings County Clerk's No. 641. N. Y. County Clerk's No. 1882. Term expires March 30, 1936.*

70 *Exhibit A, attached to affidavit of John M. Downes*

At a Special Term of the Supreme Court of the State of New York, Part I thereof, held in and for the County of New York, in the Borough of Manhattan, City, County, and State of New York, which is in the First Judicial District of the Supreme Court of the State of New York, on the 11th day of September 1925.

Present: Hon. Phoenix Ingraham, Justice.

County Clerk's No. 26150–1925

IN THE MATTER OF THE APPLICATION OF THE PEOPLE OF THE STATE of New York by James A. Beha, Superintendent of Insurance of the State of New York, for an order to take possession of the property and conserve the assets for the benefit of the creditors of the First Russian Insurance Company Established in 1827, and the interests of its policy holders, creditors, stockholders, and the public

71 A motion having been made to resettle the order herein dated and entered August 8, 1925, and the said motion having duly come on to be heard, now on reading and filing the notice of motion for resettlement dated August 18th, 1925, and upon reading the following enumerated papers heretofore filed herein, namely, the order dated and entered August 8, 1925, the order to show cause dated July 14, 1925, signed by Mr. Justice John L. Walsh, the petition of James A. Beha, Superintendent of Insurance, verified July 13, 1925, and the sworn report of Isaac Siegel, an official examiner of the Insurance Department of the State of New York dated and verified July 13, 1925, annexed to said petition, in support of said motion,

Now on motion of Campbell & Whipp, attorneys for respondent First Russian Insurance Company Established in 1827, it is

Ordered, that said order of August 8, 1925, be and the same is hereby resettled nunc pro tunc as of August 8, 1925, so as to read as follows:

At a Special Term of the Supreme Court of the State of New York, Part I thereof, held in and for the County of New York, in the Borough of Manhattan, City, County, and State of New York, which is in the First Judicial District of the Supreme Court of the State of New York, on the 8th day of August 1925.

72 Present: Hon. Phoenix Ingraham, Justice.

County Clerk's No. 26150–1925

IN THE MATTER OF THE APPLICATION OF THE PEOPLE OF THE STATE OF New York by James A. Beha, Superintendent of Insurance of the State of New York, for an order to take possession of the property and conserve the assets for the benefit of the creditors of the First Russian Insurance Company Established in 1827, and the interests of its policy holders, creditors, stockholders, and the public.

Upon reading the petition of James A. Beha, Superintendent of Insurance of the State of New York, duly verified the 13th day of July 1925, and the sworn report of Isaac Siegel, an official examiner of the Insurance Department of the State of New York, dated and verified July 13, 1925, annexed to and made a part of the aforesaid

petition of James A. Beha, said report of Isaac Siegel being marked Exhibit A, and upon the papers and exhibits annexed to said
73 report Exhibit A, and the order to show cause thereupon granted by Mr. Justice John L. Walsh, one of the Justices of the Supreme Court of the State of New York in and for the First Judicial District thereof; dated the 14th day of July 1925, and due proof of the service of said order to show cause and the papers upon which it was granted having been duly made on the said First Russian Insurance Company Established in 1827, above-named, as more fully shown by the affidavit of Francis P. Ward, duly verified the 14th day of July 1925, and upon the appearance of said First Russian Insurance Company Established in 1827 in the above entitled proceeding by its attorneys Messrs. Campbell & Whipp, and upon the affidavit of Paul E. Rasor, verified the 23rd day of July 1925, and the affidavit of Frederick B. Campbell, verified the 23rd day of July 1925, and the exhibits thereto annexed respectively;

And the motion herein on the aforesaid order to show cause having duly and regularly come on before this court for hearing on the 17th day of July 1925, and said First Russian Insurance Company Established in 1827 having appeared by its attorneys Messrs. Campbell & Whipp and having requested an adjournment and the motion having been adjourned until the 29th day of July 1925, at three o'clock in the afternoon of said day, and the court, on its own motion, having adjourned the motion until the 30th day of July 1925, and after hearing Albert Ottinger, Attorney General of the State of New York by Joseph C. H. Flynn, Deputy Attorney
74 General, and Clarence C. Fowler, Special Deputy Attorney General, of counsel in support of said motion, and the First Russian Insurance Company Established in 1827 having appeared by its attorneys Messrs. Campbell & Whipp in opposition to said motion, and Messrs. Rumsey & Morgan having appeared on behalf of Fred S. James & Co., a corporation, an alleged creditor, and the court, on its own motion, having adjourned the proceeding until August 4, 1925, and on the latter day after a full hearing and due deliberation having been had thereon;

And it appearing to the satisfaction of the court that the relief demanded by the Superintendent of Insurance should be granted as herein provided, it is hereby

Ordered, that the Superintendent of Insurance of the State of New York and his successors in office be and he is and they are hereby directed forthwith to take possession of the property and conserve the assets in the United States of America of the First Russian Insurance Company Established in 1827 and retain possession and conserve such assets until the further order of this court; and it is hereby further

Ordered, that the Superintendent of Insurance and his successors in office be and he is and they are hereby directed to ascertain, fix, and determine the lawful and valid claims, debts and demands of

the policyholders and creditors in the United States of America of said First Russian Insurance Company Established in
75 1827 and of the United States Branch thereof and make report thereupon to this court with all convenient speed; and it is hereby further

Ordered, that said Superintendent of Insurance of the State of New York and his successors in office be and he is and they are hereby authorized, permitted, and directed to pay out of the assets in the United States of America of said First Russian Insurance Company Established in 1827 and the United States Branch thereof all reasonable and necessary expenses incurred in taking and retaining possession of such assets and in ascertaining, fixing, and determining such claims, debts, and demands; and it is hereby further

Ordered, that the said First Russian Insurance Company Established in 1827, its United States Branch managers and managing agents, officers, directors, trustees, stockholders, policyholders, servants, agents, employees, and all other persons having any property or records belonging to said First Russian Insurance Company Established in 1827, or its United States Branch, manager or managing agents, are hereby directed, to assign, transfer, and deliver to the Superintendent of Insurance of the State of New York, and his successors in office, all of such property in whosesoever name the same may be, and any and all books, papers, and records, and that any persons, firms, or corporations having any books, papers, or records relating to the business of said First Russian Insur-
76 ance Company Established in 1827, or to its United States Branch, managers, or managing agents, shall preserve the same and submit them to the Superintendent of Insurance of the State of New York or his deputies or agents for examination at all reasonable times; and it is hereby further

Ordered, that the said First Russian Insurance Company Established in 1827, the United States Branch, managers, and managing agents, and the officers, agents, and employees, thereof and all other persons be and they hereby are enjoined and restrained from the transaction of its business or the disposition of its property, and that all persons be enjoined and restrained from dealing with or disposing of the property or assets or any part of the same in the United States of America of said First Russian Insurance Company Established in 1827 or of its United States Branch, managers, or managing agents, or doing or permitting to be done any act or thing which might waste the assets or allow or suffer the obtaining of preferences, attachments, judgments, garnishments, or other liens, or the making of any levy or other legal process against said First Russian Insurance Company Established in 1827, or its United States Branch, managers, and managing agents, or its property or any part of the same; and it is hereby further

Ordered, that the policyholders and creditors in the United States of America of said First Russian Insurance Company Established

in 1827 and its United States Branch, managers, or managing
77 agents, and all other persons be and they hereby are enjoined and restrained from bringing or further prosecuting any action at law, suit in equity special or other proceedings against said First Russian Insurance Company Established in 1827, its assets or property or any part thereof, or against its United States Branch, managers, or managing agents, and from making or executing any levy or other legal process upon the property or any part of the same belonging to the First Russian Insurance Company Established in 1827, or the United States Branch thereof, or in any way interfering with the Superintendent of Insurance of the State of New York, or his successors in office, in his or their possession, control, conservation, and management of the property of said First Russian Insurance Company Established in 1827, or the United States Branch thereof, or interfering with the Superintendent of Insurance of the State of New York, or his successors in office, in the discharge of his or their duties as conservators, possessors, or liquidators herein; and it is hereby further

Ordered, that the United States Trustee, the Bankers Trust Company, and all other trustees, surrender and deliver to the Superintendent of Insurance of the State of New York, and his successors in office, immediately upon service of a copy of this order, all assets and property of every kind and description in its possession belonging to the First Russian Insurance Company Established in 1827, and
that any attachment papers, executions, levies, or other
78 processes now pending or claimed to be outstanding or pending against any of said assets or property, be also at the same time surrendered and delivered to said Superintendent of Insurance, and his successors in office, and that the validity or invalidity of any such claims, levies, attachments, or executions shall be determined in the above-entitled proceeding in accordance with law and the usual course and practice in such proceedings before this court in such cases made and provided; and it is further

Ordered, that the formal notice of the making and entry of this order in the usual form be given by the Superintendent of Insurance by publication in the public press and my mail in such manner and form as in his discretion he may deem sufficient to demand that all persons indebted to said corporation render accounts of their indebtedness and to pay any sums due the corporation to the liquidator within such period of time as the Superintendent may in his discretion fix and determine, and to give notice to all policyholders and creditors in the United States of America of said First Russian Insurance Company Established in 1827, and its United States Branch, and all persons in the United States of America having any unsatisfied claim or demand of any character against said corporation or its United States Branch, and all persons in the United
States of America holding any open or subsisting contract
79 of such corporation or its United States Branch, of this proceeding and a reasonable time and opportunity to appear and

file and present proofs of claim with the Superintendent of Insurance and to be heard thereupon, and to give notice that all claims presented will be determined and the assets distributed without further notice to persons failing to comply with the aforesaid liquidation notice. Said notice may contain such other rules and regulations as the Superintendent of Insurance may deem necessary and requisite for the purpose of ascertaining, fixing, and determining all lawful and valid claims, debts, and demands of the policyholders and creditors in the United States of America of the First Russian Insurance Company Established in 1827 and of the United States Branch thereof; and it is hereby further

Ordered, that nothing contained in this order determines the right or lien of any claimant to the funds or assets of the liquidating corporation; and it is further

Ordered, that nothing contained in this order shall affect the $150,000 par value of New York City securities delivered by the Superintendent of Insurance on the 14th day of July 1925, to the respondent Company by delivery of same to Paul E. Rasor, attorney in fact of the respondent Company, pursuant to the judgment of the Supreme Court of the State of New York, which judgment has been affirmed by the New York Court of Appeals; and it is hereby further

80 Ordered that this order is made without prejudice to the respondent Company or stockholders to take such proceedings in the courts of the State of New York, within these proceedings, as the respondent may be advised, with respect to the establishment or protection of its right, if any, to any surplus funds; and nothing in the injunction in this order contained is intended to prohibit the taking of such proceedings.

Enter:

P. I.
*J. S. C.*

81 *Exhibit B, attached to affidavit of John M. Downes*

At a Special Term Part I of the Supreme Court of the State of New York, held in and for the County of New York, at the County Court House, in the Borough of Manhattan, City of New York, on the 13th day of July 1931.

Present: Hon. William T. Collins, Justice.

IN THE MATTER OF THE APPLICATION OF THE PEOPLE OF THE STATE of New York, by James A. Beha, Superintendent of Insurance of the State of New York, for an order to take possession of the property and conserve the assets for the benefit of the creditors of the First Russian Insurance Company Established in 1827, and the interests of its policyholders, creditors, stockholders, and the public.

A motion having been made for an order resettling the order herein, dated and entered June 16, 1931, upon the remittitur of the Court of Appeals.

82 Now, upon reading and filing a notice of motion for resettlement of said order, dated June 30, 1931, and the affidavit of Frederick B. Campbell thereto annexed, sworn to June 30, 1931, and upon the papers heretofore submitted and filed herein upon the motion resulting in said order of June 16, 1931, namely, the remittitur of the Court of Appeals filed with the Clerk of this Court on the 1st day of May 1931, the notice of motion herein, dated May 1st, 1931, and the affidavits of Frederick B. Campbell, sworn to May 1st, 1931, and June 9th, 1931, the affidavit of Marc D. Ratner, sworn to April 22nd, 1931, of Michael Imchanitzky, sworn to April 29th, 1931, of John M. Downes, sworn to June 2nd, 1931, of Frederick C. Pitcher, sworn to May 27th, 1931, and of Borris M. Komar, sworn to May 25th, 1931, and upon reading and filing the affidavit of John M. Downes herein, sworn to the 8th day of July 1931, and the affidavit of J. Sidney Bernstein herein sworn to July 3rd, 1931, it is

Ordered, that the said order of June 16th, 1931, be and the same hereby is resettled so as to read as follows:

At a Special Term Part I of the Supreme Court of the State of New York, held in and for the County of New York, at the Court House in the Borough of Manhattan, City of New York, on the 16th day of June 1931.

83 Present: Hon. Phoenix Ingraham, Justice.

Order on Remittitur of the Court of Appeals.

In the Matter of The Application of The People of the State of New York, by James A. Beha, Superintendent of Insurance of the State of New York, for an order to take possession of the property and conserve the assets for the benefit of the creditors of the First Russian Insurance Company, Established in 1827, and the interests of its policyholders, creditors, stockholders, and the public.

The appellant, First Russian Insurance Company, Established in 1827, and the appellant G. Frank Dougherty and the appellant James A. Tillman, having appealed to the Court of Appeals from an order of the Appellate Division of the Supreme Court, First Department, dated May 29, 1930, and entered in the office of the Clerk of the said Appellate Division on June 11, 1930, which order modified and reversed in part and affirmed in part an order entered in the office of the Clerk of the County of New York on Sep-

84 tember 10, 1929, providing among other things for the disposition of the surplus assets of the First Russian Insurance Company, Established in 1827, and said appeal having been argued at the Court of Appeals; and the Court of Appeals having on the 11th day of February 1931, ordered, adjudged, and decreed that the order of the Appellate Division of the Supreme Court so appealed

from as aforesaid, and the order of the Special Term of the Supreme Court entered as aforesaid on September 10, 1929, be reversed; that an order be entered dissolving the injunction contained in the order directing liquidation; and that the surplus assets of the First Russian Insurance Company, Established in 1827, be transferred in accordance with its opinion; and the said Court of Appeals having further ordered and adjudged that the proceedings herein be remitted to the Supreme Court of the State of New York to be proceeded upon according to law,

Now, on reading the remittitur of the Court of Appeals, filed herein on the 1st day of May 1931, and on reading the said opinion of the Court of Appeals, and upon reading and filing the notice of motion herein dated May 1st, 1931, and the affidavits of Frederick B. Campbell, verified May 1, 1931, Marc D. Ratner, verified April 22, 1931, and of Michael J. Imchanitzky, verified April 29, 1931, and proof of the service thereof, the replying affidavit of Frederic B. Campbell, verified June 9, 1931, the answering affidavit of John M. Downes, verified June 2, 1931, the affidavits of Frederic C.
85 Pitcher, verified May 25, 1931, and of Boris M. Komar, verified May 25, 1931, it is

Ordered, adjudged, and decreed:

1. That the order and judgment of the Court of Appeals be, and the same hereby are, made the order and judgment of this Court:

2. That the order of the Appellate Division of the Supreme Court for the First Department, dated May 29, 1930, and filed and entered on June 11, 1930, in the office of the Clerk of said Appellate Division, be, and the same hereby is, reversed.

3. That the order of the Special Term of New York County, entered and filed in the office of the Clerk of the County of New York on the 10th day of September 1929, be, and the same hereby is, reversed.

4. That the injunction contained in the liquidation order herein dated and entered August 8, 1925, as resettled by order dated and entered September 11, 1925, be, and hereby is, vacated and dissolved.

5. That the Superintendent of Insurance of the State of New York be, and he is hereby, permitted, authorized, and directed to pay all claims of domestic creditors in full with interest which are determined and which have not heretofore been paid, and all expenses of liquidation.

86 6. That the Superintendent of Insurance be, and he is hereby, directed to ascertain, fix, and determine as soon as possible the amounts of any and all lawful and valid claims heretofore filed herein on which attachments were obtained prior to the order directing liquidation in the above-entitled proceedings and as to such of said claims or debts as are found valid to pay the same in full with interest.

7. That the Superintendent of Insurance be, and he is hereby, permitted, authorized, and directed as soon as possible after the entry of this order to pay in full with interest all claims heretofore filed

in this proceeding, which have been determined and found by the Referee heretofore appointed herein to be valid debts or obligations of the First Russian Insurance Company, Established in 1827, or of its United States Branch, regardless of the fact that some or all of such claims may be of foreign origin and might have heretofore been classified as "foreign" claims or claims of the "second" or "third" class by the Superintendent of Insurance or by the said Referee.

8. That the Superintendent of Insurance be, and he hereby is, directed to ascertain, compute, and report to this Court with his recommendations as soon as possible, the amount and validity of any and all other claims heretofore filed in this proceeding as to such of said claims as are found by him to be valid debts or obliga-
87 tions of the First Russian Insurance Company, Established in 1827, or of its United States Branch, to pay the same in full with interest, as and when directed by this court, regardless of the fact that some or all of such claims may be of foreign origin that might have heretofore been classified as "foreign" claims or claims of the "second" or "third" class.

9. The Superintendent of Insurance shall set aside and retain in his possession funds sufficient to pay all claims heretofore filed in full with interest; the funds so retained shall be known as the "reserve fund for filed claims."

10. In addition to the "reserve fund for filed claims", the Superintendent of Insurance shall set aside and retain in his possession funds sufficient to pay (1) all further reasonable expenses of liquidation; (2) all taxes which may then be due or become due to the Government of the United States and the State of New York; and the funds so set aside and retained shall be known as the "reserve fund for taxes and expenses of liquidation."

11. The surplus assets then remaining in the possession of the Superintendent of Insurance over and above the sums set aside and retained by him as and for the "reserve fund for filed claims" and the "reserve fund for taxes and expenses of liquidation", shall be known as described as the "accrued surplus fund" of the
88 First Russian Insurance Company, Established in 1827 and its United States Branch, in the above entitled proceeding.

12. The "accrued surplus" fund as herein above defined and increment received thereon shall be held by the Superintendent of Insurance for a period of four months after the date of the entry of this order, for the purpose of and subject to attachment and/or execution by creditors or other persons, firms, or corporations having claims against the First Russian Insurance Company, Established in 1827, or its United States Branch, which claims were not, prior to the date of the entry of this order, filed with the Superintendent of Insurance; and each and every creditor or other person, firm, or corporation having or asserting such claims against the First Russian Insurance Company, Established in 1827, or its United States Branch, shall be permitted to maintain an action against said Com-

pany in the Courts of this State through levy of attachment or execution or otherwise against said "accrued surplus fund" in the manner provided by law.

13. After the expiration of the said period of four months after the entry of this order, the Superintendent of Insurance shall, and he is hereby, authorized and directed to pay over to the First Russian Insurance Company, Established in 1827, as represented by a quorum of its board of directors, consisting of Leonid Davydoff, Count Alexandre Mordvinoff and Victor de Yermoloff, any
89 balance of the said "accrued surplus fund" then remaining in his hands which has not been levied upon by virtue of warrant of attachment or execution.

14. The "reserve fund for filed claims" shall be held separate and apart from the "accrued surplus fund" and from any other funds or assets of the First Russian Insurance Company, Established in 1827, and its United States Branch, and said "reserve fund for the filed claims" shall not be subject to levy by warrant of attachment or execution.

15. If any claim heretofore filed herein is disallowed and the disallowance thereof confirmed by a final order of the court, then the Superintendent of Insurance shall transfer the amount set aside for the payment of such disallowed claims to the "accrued surplus fund" and it shall thereupon become and be held and disposed of in the manner herein provided for the disposition of the said "accrued surplus fund."

16. If any claim heretofore filed is allowed in a reduced amount and the allowance in such reduced amount confirmed by a final order of the court, then the Superintendent of Insurance shall transfer the excess of the amount set aside for the payment thereof over and above the amount necessary to satisfy the claim in its then reduced amount to the "accrued surplus fund", and it shall thereupon become and be held and disposed of in the manner herein provided for the disposition of the said "accrued surplus fund."

90 17. After the final disposition of all claims heretofore filed herein either by payment thereof or by a final order of the court confirming the disallowance thereof, the Superintendent of Insurance is authorized and directed to transfer to the "accrued surplus fund" any balance of said "reserve fund for filed claims" and any other funds or assets of the said Company then remaining in his hands after making reservation of funds sufficient to pay his proper charges and expenses, and said sums so transferred shall thereupon become part of the said "accrued surplus fund" and be held and disposed of in the manner herein provided for the disposition of the said "accrued surplus fund."

18. The Superintendent of Insurance is hereby directed to make and file within forty-five days from the date of this order an account of his proceedings as liquidator of the First Russian Insurance Company, Established in 1827, from March 7, 1929, down to the date of this order.

19. Any party to this proceeding may hereafter apply at the foot of this decree for such further relief as he may be advised.

Enter:

P. I.,
J. S. C.

Enter:

W. T. C.
J. S. C.

91 *Exhibit C, attached to affidavit of John M. Downes*

At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of New York, at the County Court House, in the Borough of Manhattan, City, County, and State of New York, in the First Judicial District, on the 13 day of May 1932.

Present: Hon. Edward J. Glennon, Justice.

County Clerk's Number 26150–1925

IN THE MATTER OF THE APPLICATION OF THE PEOPLE OF THE STATE of New York, by James A. Beha, Superintendent of Insurance of the State of New York, for an order to take possession of the property and conserve the assets for the benefit of the creditors of the First Russian Insurance Company Established in 1827, and the interests of its policy holders, creditors, stockholders, and the public

A motion having been made by George S. Van Schaick, Su-
92 perintendent of Insurance of the State of New York, as liquidator of the domesticated United States Branch of the First Russian Insurance Company Established in 1827, by a notice of motion dated February 5, 1932, for an order ratifying, approving, and confirming in all respects said report, audit, and petition, the proceedings had and taken and things done in connection with the liquidation of the domesticated United States Branch of the First Russian Insurance Company Established in 1827, the income and assets received, the disbursements made, the bills rendered to the liquidator and expenses incurred excepting as set forth in Exhibit H, Schedule III, of said report, the allowances and disallowances of claims and the accrued expenses of liquidation as in said report stated; authorizing, directing, and permitting the Superintendent of Insurance to reserve out of the surplus assets in his possession in this proceeding cash funds or cash funds and securities in the sum of and of the cash value of One Hundred Forty-two Thousand Five Hundred Sixty-seven and 46/100 ($142,567.46) Dollars, for expenses of liquidation and taxes, as stated in said report, audit, and petition; authorizing, permitting, and directing that the balance of surplus assets, consisting of cash funds or cash funds and securities in pos-

session of the liquidator amounting to One Million One Hundred Nineteen Thousand Six Hundred Thirty and 96/100 ($1,119,630.96) Dollars, as carried on the books of the liquidator and subject to any existing liens or preferences against same, be reserved by the
93 liquidator to be applied pro rata to payment of such claims as may be hereafter allowed which were filed with the liquidator not later than June 16, 1931, or applied to payment of such foreign claims and attachments in such manner as the court may hereafter direct; declaring that there are no surplus assets in this proceeding available at the time this report is filed against which attachments may be levied, and declaring that there are no surplus assets in possession of the liquidator in this proceeding available at the time of filing this report to be transferred and paid over to First Russian Insurance Company Established in 1827, as represented by a quorum of its directors, consisting of Leonid Davidow, Victor Yermoloff and Count Alexandre Nordvinoff, pursuant to the decision of the Court of Appeals in Matter of People (First Russian Ins. Co.), 225 N. Y. 415, and the order of the Supreme Court, New York County, dated and entered June 16, 1931, as resettled by an order dated and entered July 13, 1931; ordering and directing that all persons interested or who may have any claim or claims not filed in this proceeding, which might heretofore have been presented in this proceeding, be barred and foreclosed from presenting or filing any claim or claims with the liquidator in this proceeding or any claim or claims against the assets in this proceeding in possession of the liquidator; ordering and directing that the funds reserved by the liquidator, as in said report stated, be not subject to levy, attachment or execution by claimants or creditors of the First Russian Insurance Company Established in 1827, or its United
94 States Branch, excepting for the purposes or claims for which said funds are reserved and for such other and further relief as may to the court seem just, proper, and equitable in the premises;

Now, on reading the said third report, audit, and petition, duly verified the 30th day of January 1932, and duly filed with exhibits annexed thereto in the office of the Clerk of the County of New York on the 5th day of February 1932, and upon reading and filing the notice of filing said report, audit, and petition, and notice of motion to confirm the same, dated February 5, 1932, with proof of due service thereof upon all interested persons, and upon reading the decision of the Court of Appeals in this proceeding, reported in 255 N. Y. 415, the remittitur of the Court of Appeals upon said decision, dated February 10th, 1931, and the order of this Court upon said remittitur, dated and entered June 16, 1931, as resettled by an order of this Court dated and entered July 13, 1931, and upon reading and filing the affidavits of John M. Downes, duly sworn to on the 4th day of March 1932, and the 10th day of March 1932, respectively, in answer to objections filed in behalf of Sergei Serebrennikoff, Victor Yermoloff, Bessie Smith, Anna Binder, and G. Frank Doherty, as assignee of Alexis Davidow and Weniaman G. Toptcheenko, and Zygfryd

Englisch, in support of said motion to confirm; and upon reading and filing ~~the objections of Bessie Smith herein, dated and verified the 29th day of February 1932,~~ the affidavit of Maximillian
95 L. Blek, attorney for Anna Binder, sworn to the 29th day of February 1932, ~~the objections of Sergei Nicolaevith Serebrennikoff, verified the 1st day of March 1932 objections in behalf of Victor Yermoloff, verified the 1st day of March 1932, the objections of G. Frank Dougherty, as assignee of Alexis Davidow and Weniamin G. Toptcheenko, verified the 1st day of March 1932,~~ and the affidavit of Jacob Jolles, in behalf of Zygfryd Englisch, sworn to the 4th day of March 1932, in opposition to said motion to confirm; and after hearing Joseph G. Bill, Esq., attorney for the Superintendent of Insurance of the State of New York, as liquidator of the United States Branch of First Russian Insurance Company Established in 1827, by John M. Downes, Esq., of Counsel, and Messrs. Campbell & Whipp, attorneys for First Russian Insurance Company Established in 1827, by Frederick B. Campbell, Esq., of counsel, in support of said motion to confirm the said report, audit, and petition; and J. Sidney Bernstein, Esq., attorney for James A. Tillman, and Borris M. Komar, Esq., attorney for various foreign claimants, appearing but not opposing the motion; and after hearing Messrs. Blum & Jolles, attorneys for Zygfryd Englisch, an attachment creditor, by Jacob Jolles, Esq., of counsel, Messrs. Englehard, Pollak, Pitcher & Stern, attorneys for G. Frank Dougherty, as assignee of Alexis Davidow and Weniamin G. Toptcheenko, Sergei Nicolaevitch Sere-
96 brennikoff, and of counsel for Victor Yermoloff in this proceeding, by G. Frank Dougherty, of counsel, in support of their respective objections herein and in opposition to said motion to confirm said report, audit and petition; and due deliberation having been had; and upon filing the decision of the Court, it is, on motion of Joseph G. Bill, Esq., attorney for the Superintendent of Insurance, as liquidator of the domesticated United States Branch of First Russian Insurance Company Established in 1827.

Ordered, adjudged, and decreed that said report, audit, and petition be and hereby is corrected so that the cash funds or cash funds and securities to be reserved by the liquidator to be applied to payment of such claims as may be hereafter allowed, stated at page 7 of the petition of the liquidator, shall read, "$1,149,630.96" instead of "$1,119,630.96"; that the item "Assets, June 16th, 1931, $1,363,198.42", appearing at page 118 of the said report by the Special Deputy Superintendent of Insurance, by and the same hereby is corrected to read, "Assets, June 16th, 1931, $1,393,198.42"; that the "Amount required in excess of assets in possession of liquidator, $3,409,126.54", appearing at page 118 of the said report, be and the same hereby is corrected to read "Amount required in excess of assets in possession of liquidator, $3,379,126.54"; that the cash funds or cash funds and securities in possession of the liquidator recommended to be reserved by the liquidator to be applied to payment of such claims as may be hereafter allowed, appearing at page 120 of

said report, be and the same hereby is corrected to read, "$1,149,-630.96" instead of "$1,220,630.96"; and it is hereby further

97 Ordered, adjudged, and decreed that any and all of objections to said report, audit and petition be and the same hereby are in all respects disallowed, overruled, and dismissed; and it is hereby further

Ordered, adjudged, and decreed that the said third report, audit, and petition, as corrected, the proceedings and actions had and taken and things done in connection with the liquidation of the domesticated United States Branch of First Russian Insurance Company Established in 1827, the income and assets received, the disbursements made and the bills rendered to the liquidator and expenses incurred, excepting as set forth in Exhibit H, Schedule III, or said report, audit, and petition, the allowances and disallowances of claims, and the accrued expenses of liquidation, as in said report stated, be and the same hereby are in all respects ratified, approved, and confirmed; and it is hereby further

Ordered, adjudged, and decreed that the assets in this proceeding be and the same hereby are fixed and determined at the sum of $1,393,198.42, as carried upon the books of the liquidator, and as more fully set forth in said third report, audit, and petition in Exhibit A, at Page 92 thereof; and it is hereby further

Ordered, adjudged, and decreed that the expenses and disbursements incurred and/or paid by the Superintendent of Insur-

98 ance, as liquidator, from March 7, 1929 to June 16, 1931, aggregating the sum of $112,646.54, as more fully set forth in said third report, audit, and petition in Exhibit C, at pages 125–141, inclusive, thereof, and the accrued bills rendered and paid from June 17, 1931 to September 30, 1931, and the expenses accrued and bills rendered but unpaid from June 17, 1931 to September 30, 1931, as set forth in Exhibit H, Schedules I and II of said report, audit, and petition, at pages 339–345, inclusive, thereof, be and the same are in all respects allowed, ratified, approved, and confirmed; and it is hereby further

Ordered, adjudged, and decreed that the General Fund of the State of New York be reimbursed by the Superintendent of Insurance, as liquidator of the above-entitled proceeding, in the sum of $1,332.45 for the pro rata part of the annual salary paid to Clarence C. Fowler, Esq., and Richard A. Brennan, Esq., as Chief of the Liquidation Bureau of the New York State Insurance Department, and chargeable to the above-entitled proceeding from March 7, 1929 to June 16, 1931, as more fully set forth in said report, audit, and petition, in Exhibit A, at page 100 thereof; and it is hereby further

Ordered, adjudged, and decreed that the foreign claims set forth in said report, audit, and petition in Exhibit E, pages 158–333 thereof, be and the same hereby are disallowed as foreign non-

99 United States Branch claims, but that said claims, together with any other foreign non-United States Branch claims which may have been filed with the liquidator prior to June 16, 1931,

may be proven with and passed upon by the liquidator pursuant to the directions contained in the decision of the Court of Appeals in Matter of People (First Russian Ins. Co.), 255 N. Y. 415; and by the order of this Court in this proceeding, dated and entered June 16, 1931, as resettled by an order of this Court, dated and entered July 13, 1931, and it is hereby further

Ordered, adjudged, and decreed that payments of interest on claims, as set forth by the liquidator in said report, audit, and petition, in Exhibit F, Schedules I, II, and III, at pages 335–337, inclusive, thereof, be and the same hereby are in all respects ratified, approved, and confirmed; and it is hereby further

Ordered, adjudged, and decreed that the superintendent of insurance be and he hereby is permitted, authorized, and directed to reserve and retain in his possession, as liquidator, cash funds or cash funds and securities in this proceeding in the sum of or of the cash value of $142,567.46 for expenses of liquidation and taxes, as stated in said report, audit, and petition at page 118 thereof, and that the remainder or balance of such surplus assets in this proceeding, consisting of cash and securities amounting to $1,149,630.96, as carried in the accounts of the liquidator, and which
100 assets may or may not yield a cash sum of $1,149,630.96, be reserved by the superintendent of insurance to be applied pro rata to payment of such foreign claims as may be hereafter allowed, which were filed with the liquidator herein not later than June 16th, 1931, or applied to payment of said foreign claims and attachments in such manner as the Court may hereafter direct, provided, however, that should the applications of Michael Imchanitzky, Esq., and Messrs. Campbell & Whipp, now pending undecided in this Court, result ultimately in decisions granting in whole or in part the respective reliefs prayed for in said applications, then and in such case or cases the said balance of surplus assets, amounting to $1,149,630.96, shall be subject to deduction therefrom of any amount or amounts which may be hereafter awarded or directed to be paid as a result of said applications; and it is hereby further

Ordered, adjudged, and decreed that at the time said report, audit, and petition was filed, and at the date of this order, there are no surplus assets available in this proceeding against which attachments may be levied, as provided in and by the decision of the Court of Appeals in 255 N. Y. 415 in this proceeding, and that there are no surplus assets in possession of the superintendent of insurance in this proceeding available at the time of filing said report, audit, and petition or at the date of entry of this order,
to be transferred and paid over to First Russian Insurance
101 Company Established in 1827, as represented by a quorum of its directors, consisting of Alexis Davidow, Victor Yermoloff, and Count Alexandre Mordvinoff, pursuant to the decision of the Court of Appeals in this proceeding, in Matter of People (First Russian Ins. Co.), 255 N. Y. 415, and the order of the Supreme Court, New York County, dated and entered June 16th,

1931, as resettled by an order dated and entered July 13, 1931; and it is hereby further

Ordered, adjudged, and decreed that any and all persons or parties interested in this proceeding, or who may have or may hereafter have any claim or claims against the First Russian Insurance Company Established in 1827, or its United States Branch, which said claim or claims might heretofore have been filed in this proceeding, or any claim or claims whatsoever against the assets in this proceeding in possession of the Liquidator excepting as authorized in and by this order, and whose claims were not filed with the liquidator prior to June 16th, 1931, be and they hereby are barred and foreclosed from presenting and/or filing any such claim or claims with the liquidator in this proceeding or any claim or claims whatsoever against the assets in this proceeding in possession of the liquidator, excepting as authorized in and by this order; and it is hereby further

Ordered, adjudged, and decreed that the funds reserved by the liquidator, as shown in and by his third report, audit, and
102 petition in this proceeding, and/or as may be directed herein to be reserved by said liquidator, shall not be subject to levy, attachment, or execution by claimants or creditors of the First Russian Insurance Company Established in 1827, or its United States Branch, excepting for such purposes or claims as said funds are directed to be reserved, and in any event only in the amount and to such extent as such claim or claims may be allowed and payable; and it is hereby further

Ordered, adjudged, and decreed that the Superintendent of Insurance, as liquidator, proceed with all convenient speed to carry out the directions and liquidate the non-United States claims which may have been filed with him on or before June 16, 1931, as directed in and by the decision of the Court of Appeals in Matter of People (First Russian Ins. Co.), 255 N. Y. 415, and by the order of this Court, in this proceeding, dated and entered June 16th, 1931, as resettled by an order of this Court, dated and entered July 13, 1931.

Enter:

E. J. G.,
J. S. C.

103 *Exhibit D, attached to affidavit of John M. Downes*

At a Special Term, Part II, of the Supreme Court held in and for the County of New York at the Court House in the Borough of Manhattan, City of New York, on the 7th day of December 1934.

Present: Hon. Isador Wasservogel, Justice.

County Clerk's No. 26150—1925

IN THE MATTER OF THE APPLICATION OF THE PEOPLE OF THE STATE OF New York, by James A. Beha, Superintendent of Insurance of the State of New York, for an order to take possession of the property and conserve the assets for the benefit of the creditors of the First Russian Insurance Company Established in 1827, and the interests of its policyholders, creditors, stockholders and the public

MATTER OF PETITION OF FREDERICK B. CAMPBELL AND CAMPBELL & Whipp, for an order adjudging and enforcing attorneys' lien and directing payment of claim

104 Appeals having been taken to the Court of Appeals by the Superintendent of Insurance of the State of New York, as liquidator of First Russian Insurance Company Established in 1827, Georg Brusendorff, George J. Hadjinoff, Andrew Ditmar, and others, from the order of the Appellate Division of the Supreme Court, First Judicial Department, dated and entered the 15th day of June, 1934, in the above-entitled proceeding, which affirmed with $20.00 costs and disbursements an order of the Supreme Court, New York County, entered in the office of the Clerk of the County of New York on February 27, 1934, directing the Superintendent of Insurance of the State of New York, as liquidator of First Russian Insurance Company Established in 1827, to pay to the petitioners Frederick B. Campbell and Paul C. Whipp, as copartners under the firm name of Campbell & Whipp, the sum of One Hundred Twenty-eight Thousand Ten and 58/100 Dollars ($128,010.58) together with interest thereon from June 16, 1931, to date of payment; and the said appeals having been duly argued at the Court of Appeals, and after due deliberation, the Court of Appeals having ordered and adjudged that the said order so appealed from as aforesaid be affirmed with costs, and having further ordered that the proceedings therein be remitted to the Supreme Court there to be proceeded upon according to law;

Now, on reading and filing the remittitur from the Court of Appeals herein, and upon motion of Campbell & Whipp, the petitioners above named, it is

105 Ordered and adjudged that the said order and judgment of the Court of Appeals be and the same hereby are made the order and judgment of this Court.

Enter:

I. W.,
J. S. C.

106 *Exhibit E, attached to affidavit of John M. Downes*

At a Special Term Part II of the Supreme Court of the State of New York, held in and for the County of New York, at the courthouse, Pearl and Centre Streets, Borough of Manhattan, City of New York, on the 7th day of December 1934

Present: Hon. Isidore Wasservogel, Justice.

Order on Remittitur of Court of Appeals No. 26150/25

IN THE MATTER OF THE APPLICATION OF THE PEOPLE OF THE STATE OF New York, by James A. Beha, Superintendent of Insurance of the State of New York, for an order to take possession of the property and conserve the assets for the benefit of the creditors of the First Russian Insurance Company Established in 1827, and the interests of its policyholders, creditors, stockholders and the public

MATTER OF PETITION OF MICHAEL IMCHANITZKY, FOR AN ORDER DIRECTing payment of claim under assignment

The appellants, the Superintendent of Insurance of the
107 State of New York, as liquidator of First Russian Insurance Company, Established in 1827, George J. Hadjinoff and other creditors, Georg Brusendorff and other creditors, and Andrew Ditmar, a claimant, having appealed to the Court of Appeals of the State of New York from an order of the Appellate Division of the Supreme Court, First Judicial Department, dated and entered June 15th, 1934, in the above entitled proceeding, which order affirmed, with $20 costs and disbursements, an order of the Supreme Court of the State of New York, County of New York, dated the 26th day of February 1934, and entered in the office of the Clerk of the County of New York, on the 27th day of February 1934, authorizing and directing the Superintendent of Insurance, as Liquidator of the First Russian Insurance Company, Established in 1827, to pay to the petitioner herein the sum of $38,403.17, with interest thereon from June 16th, 1931, to the date of payment; and said appeal having been duly argued at the Court of Appeals, and after due deliberation, the Court of Appeals, having, on the 4th day of December 1934, ordered and adjudged that the order of the Appellate Division of the Supreme Court, First Judicial Department, so appealed from as aforesaid, be affirmed with costs, and having further ordered and adjudged that the proceedings therein be remitted to the Supreme Court, there to be proceeded upon according to law,

Now, on reading and filing the remittitur from the Court of
108 Appeals herein, and upon motion of George Frankenthaler, Esq., the attorney for the petitioner Michael Imchanitzky, it is

Ordered, that the said order and judgment of the Court of Appeals be and the same hereby are made the order and judgment of this court.

Enter:

I. W.,
J. S. C.

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In United States District Court, Southern District of New York

Equity 79—160

UNITED STATES OF AMERICA, COMPLAINANT

*against*

GEORGE S. VAN SCHAICK, SUPERINTENDENT OF INSURANCE OF THE State of New York, Liquidator of the Domesticated United States Branch of the First Russian Insurance Company Established in 1827, defendant

*Order and decree*

Filed December 21, 1934

The complainant, on November 14, 1934, having filed its bill of complaint herein, verified November 14, 1934; and complain-
109 ant thereafter having filed a bill of particulars of said complaint dated December 10, 1934;

And complainant having moved by order to show cause dated December 7, 1934, upon the aforesaid bill of complaint and upon the affidavit of Leon E. Spencer, verified December 7, 1934, and the papers thereto attached, for an injunction pendente lite restraining the defendant from distributing any part of the funds alleged in the bill of complaint to be in the possession of the defendant, except such portion of these assets as the defendant herein has been directed by an order of the Supreme Court of New York, New York County, Special Term, to retain in a special account for the purpose of meeting expenses of administration of the proceeding in the Supreme Court under Section 63 of the Insurance Law of the State of New York to liquidate domestic claims adjudicated and allowed therein, as set forth in Paragraph 5 of the complaint herein; and defendant, in opposition to complainant's motion for an injunction pendente lite, having filed with the Court the affidavit of John M. Downes, verified December 10, 1934, and the exhibits thereto attached marked A, B, C, D, and E;

And the defendant, by order to show cause dated December 8, 1934, having moved for an order dismissing the bill of complaint on the ground that said complaint fails to state facts sufficient to constitute a cause of action;

And the cause having come on to be heard;

Now, upon reading the papers filed herein above recited,
110 and after hearing Martin Conboy, Esq., United States District Attorney for the Southern District of New York, on behalf of the complainant, United States of America, in support of the bill of complaint and of the motion for an injunction pendente lite, and John M. Downes, Esq., on behalf of defendant, in support of motion to dismiss the bill of complaint and in opposition to complainant's motion for an injunction pendente lite; and due deliberation having been had;

And upon motion of John M. Downes, Solicitor for the defendant, it is

Ordered, adjudged, and decreed that the defendant's motion to dismiss the bill of complaint for insufficiency be and hereby is granted, and the motion of the complainant for an injunction pendente lite be and hereby is denied; and that the bill of complaint be and hereby is dismissed.

And complainant having applied for a suspension pending appeal, of the order and decree, and defendant having opposed the allowance thereof, it is further

Ordered that the operation of this order and decree be and hereby is suspended until the coming down and the filing in this Court of the mandate of the United States Circuit Court of Appeals upon an appeal by complainant to such Court, upon the conditions hereinafter specified, namely:

111 (a) that the petition and allowance of appeal, the assignment of errors and the citation be filed and served within two (2) days from the date hereof;

(b) that the printed transcript of the record shall be made, filed, and served by the complainant within ten (10) days from the date hereof;

(c) that complainant will apply to the United States Circuit Court of Appeals for the hearing of such appeal upon a date as near the commencement of the January 1935 term (January 7, 1935) of said Court as may be possible; and

(d) that complainant's brief on appeal will be served upon defendant's solicitors ten days prior to the date so set for argument of such appeal.

December 20, 1934.

ALFRED C. COXE,
*U. S. D. J.*

[File endorsement omitted.]

112 In United States District Court, Southern District of New York

[Title omitted.]

*Petition and allowance of appeal*

The complainant, United States of America, by Martin Conboy, United States Attorney for the Southern District of New York, considering itself aggrieved by the order and decree in the above-entitled cause dated December 20, 1934, and filed December 20, 1934, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Second Circuit for the reasons specified in the Assignment of Errors filed herewith and prays that this appeal be allowed, that a citation be issued, directed to the above-named defendant commanding it to appear before the United States Circuit Court of Appeals for the Second Circuit to do and receive what may be just in the premises, and that a transcript
113 of the record, proceedings, and papers upon which the said decree and order were made, duly authenticated, be sent to the United States Circuit Court of Appeals for the Second Circuit.

MARTIN CONBOY,
*United States Attorney for the Southern District of New York, Solicitor for Complainant, Office & P. O. Address, U. S. Courts & P. O. Bldg., Borough of Manhattan, City of New York.*

Ordered that the appeal prayed for by the complainant, United States of America, be and hereby is allowed.

Dated, New York, N. Y., December 22nd, 1934.

ALFRED C. COXE,
*U. S. D. J.*

114 In United States District Court, Southern District of New York

[Title omitted.]

*Assignment of errors*

Now comes the complainant, United States of America, and files the following assignment of errors upon which it will rely on its appeal from the order and decree in the above entitled cause made and entered on December 20, 1934:

1. The Court erred in granting the motion of the defendant to dismiss the bill of complaint for failure to state facts sufficient to constitute a cause of action.

2. The Court erred in granting the motion of the defendant to dismiss the bill of complaint for insufficiency.

3. The Court erred in denying the motion of the complainant for an injunction pendente lite.

115 4. The Court erred in holding that the assignment from the Union of Soviet Socialist Republics to the complainant, dated

November 16, 1933, did not transfer to the complainant all of the right, title, and interest of the First Russian Insurance Company established in 1827, and all the right, title, and interest of all of its stockholders, in all of the property of the First Russian Insurance Company, established in 1827, in the United States, including the cash, securities, and other assets held by the defendant.

5. The Court erred in holding that the decrees of the Russian State nationalizing the First Russian Insurance Company, established in 1827, and appropriating all of its property in the United States, including the cash, securities, and other assets held by the defendant, are opposed to the public policy of the United States.

6. The Court erred in holding that the decrees of the Russian State nationalizing the First Russian Insurance Company, established in 1827, were ineffectual to reach the properties of the First Russian Insurance Company, established in 1827, in the United States.

7. The Court erred in holding that recognition of the Soviet Government by the United States did not change the confiscatory nature of the decrees of the Russian State nationalizing the First Russian Insurance Company, established in 1827, and appropriating all of its property in the United States, including the cash, securities, and other assets held by the defendant.

116 8. The Court erred in holding that the decrees of the Russian State did not appropriate and transfer to the Russian State all of the right, title, and interest of the First Russian Insurance Company, established in 1827, and all of the right, tile, and interest of all of its stockholders in all of the property of the First Russian Insurance Company, established in 1827, in the United States including the cash, securities, and other assets held by the defendant.

9. The Court erred in holding that by the decrees of the Russian State the said Russian State did not become the liquidator of all of the assets of the First Russian Insurance Company, established in 1827, including the cash, securities, and other assets held by the defendant.

Wherefore, complainant prays that the said order and decree, made and entered December 20th, 1934, be reversed and that the said Court may be directed to grant the complainant's motion for an injunction *pendente lite* as prayed for in the bill of complaint.

Dated, New York, N. Y., December 22, 1934.

MARTIN CONBOY,

*United States Attorney for the Southern District of New York, Solicitor for Complainant, Office and P. O. Address: U. S. Courts and P. O. Bldg., Borough of Manhattan, New York City.*

117 [Citation in usual form omitted in printing.]

118 In United States District Court, Southern District of New York

[Title omitted.]

*Stipulation as to record*

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated January 14, 1935.

MARTIN CONBOY,
*U. S. Attorney, Attorney for Complainant-Appellant.*
JOHN M. DOWNES,
*Attorney for Defendant-Appellee.*

119 [Clerk's certificate to foregoing transcript omitted in printing.]

# UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

October Term, 1934—Cal. No. —

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

*against*

GEORGE S. VAN SCHAICK, SUPERINTENDENT OF INSURANCE OF THE State of New York, Liquidator of the Domesticated United States Branch of the First Russian Insurance Company, Established in 1827, defendant-appellee

*Order*

Upon the annexed consent and upon the motion of F. W. H. Adams, United States Attorney for the Southern District of New York, attorney for complainant-appellant, it is hereby

Ordered that Louis H. Pink, Superintendent of Insurance of the State of New York, liquidator of the domesticated United States branch of the First Russian Insurance Company, established in 1827, be and hereby is substituted for defendant-appellee, George S. Van Schaick, and it is

Further ordered that this suit be and it hereby is revived and continued under the title "United States of America, complainant-appellant, against Louis H. Pink, Superintendent of Insurance of the State of New York, Liquidator of the Domesticated United States Branch of the First Russian Insurance Company, established in 1827, defendant-appellee."

Dated New York, N. Y., May 21st, 1935

WM. PARKIN, *Clerk.*

Filed May 23, 1935.

United States Circuit Court of Appeals for the Second Circuit

October Term 1934—Cal. No. —

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

*against*

GEORGE S. VAN SCHAICK, SUPERINTENDENT OF INSURANCE OF THE State of New York, Liquidator of the Domesticated United States branch of the First Russian Insurance Company, Established in 1827, defendant-appellee

*Stipulation*

Whereas, Louis H. Pink has succeeded the above named defendant-appellee as Superintendent of Insurance of the State of New

York, liquidator of the domesticated United States branch of the First Russian Insurance Company, established in 1827, it is hereby

Stipulated and agreed that Louis H. Pink, Superintendent of Insurance of the State of New York, liquidator of the domesticated United States branch of the First Russian Insurance Company, established in 1827, may be substituted for the defendant-appellee, George S. Van Schaick, and that this suit may be revived and continued under the title "United States of America, complainant-appellant, against Louis H. Pink, Superintendent of Insurance of the State of New York, liquidator of the domesticated United States branch of the First Russian Insurance Company, established in 1827, defendant-appellee."

Dated New York, N. Y., May 1935.

F. W. H. ADAMS,
*Complainant-Appellant.*
JOHN M. DOWNES,
*Solicitor for Defendant-Appellee.*

United States Circuit Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

*against*

GEORGE S. VAN SCHAICK, SUPERINTENDENT OF INSURANCE OF THE State of New York, Liquidator of the Domesticated United States Branch of the First Russian Insurance Company, Established in 1827, defendant-appellee

Before MANTON, AUGUSTUS N. HAND, and CHASE, Circuit Judges

In equity. Appeal from a decree of the District Court for the Southern District of New York dismissing the bill of complaint. Affirmed.

Martin Conboy, United States attorney, for complainant-appellant; Francis H. Horan, Edward J. Ennis, assistant United States attorneys.

John Downs, Alfred L. Green, Victor S. Cohen, Clarence C. Fowler, counsel for defendant-appellee.

PER CURIAM: Affirmed on the authority of *United States* v. *Bank of New York and Trust Company* handed down herewith.

United States Circuit Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

*against*

BANK OF NEW YORK AND TRUST COMPANY, DEFENDANT-APPELLEE

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

*against*

PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY, SUCCESSOR to the Bank of Manhattan Trust Company, defendant-appellee

UNITED STATES OF AMERICA, COMPLAINANT-APPELLANT

*against*

GEORGE S. VAN SCHAICK, SUPERINTENDENT OF INSURANCE OF THE State of New York, Liquidator of the Domesticated United States Branch of the First Russian Insurance Company, Established in 1817, defendant-appellee

MANTON, Circuit Judge, dissenting.

The complaints in these actions ask for accountings seeking to recover balances held by Russian insurance corporations, Moscow Fire Insurance Company of Moscow, Russia; The First Russian Insurance Company, and Northern Insurance Company of Moscow, Russia, held by the respective banks, appellees, as depositories. Each insurance company had its principal offices in Russia.

In Bank of New York and Trust Company case, the complaint alleges that in 1917 and 1920 decrees of the Russian State dissolved the Moscow Fire Insurance Company; that all of its right, title and interest and all the right, title and interest of the stockholders in its property, including deposits made with the Superintendent of Insurance of the State of New York, was confiscated and appropriated by the Russian State. It alleges that, on April 18, 1933, the claims of domestic creditors to the fund deposited with the Superintendent of Insurance of New York had been satisfied and that he, pursuant to an order of the Supreme Court of New York, directed that the fund be released and paid, and the balance transferred and delivered to the agent or depository of the Moscow Insurance Company, not to be withdrawn except upon an order of a court of competent jurisdiction; that the appellee received and had cash securities amounting to $1,180,399.54. It set forth an assignment on November 16, 1933, by the Russian State to the appelant for valuable consideration, of all the right, title and interest in and to the cash and securities constituting the balance of the deposit and also that the appellant by assignment had all the right, title and interest of all Russian nationals in and to this cash and securities, and that it was the sole and exclusive owner entitled to immediate possession. It alleges a demand of and refusal by appellee to deliver this property to appellant and the wrongful withholding thereof.

In the Van Schaick case, the complaint pleaded that the First Russian Insurance Company had been dissolved by decree of the Russian State and its property, including its deposit with the Superintendent of Insurance of New York, had been confiscated and appropriated by the Russian State. It alleges that on August 8, 1925, by order of the New York State Supreme Court, the Superintendent of Insurance took possession of the property of the domestic United States branch of that insurance company (established 1907) under section 63 of the insurance law of the State. That all domestic claims had been adjudicated and allowed, leaving undisposed of certain foreign claims which arose in the conduct of the

business outside of the United States; that two claimants residing in the city of New York had been allowed $128,010.58 and $38,403.17 each, respectively, by an order of the State supreme court on February 26, 1934. That on appeal to the appellate division of the supreme court of the State, this award was affirmed (June 15, 1934) but that an appeal was taken to the Court of Appeals of the State of New York and is undisposed of. An assignment of the balance of $1,170,783.36, as of November 16, 1933, is pleaded.

In the case of president and directors of the Manhattan Company, it is pleaded that the Northern Insurance Company of Moscow, is a Russian corporation with a branch in New York, and that it made a deposit with the superintendent of insurance of New York to comply with the requirements of the insurance law. That, it too, had been dissolved back in 1917 and 1918, and its property confiscated by the Russian State. That the superintendent of insurance took possession August 3, 1933; the claims of domestic creditors as to this fund, deposited with the superintendent of insurance, were satisfied, pursuant to an order of the State supreme court, and directed that the funds be released, paid, and transferred to the agent or depository of the Northern Insurance Company of Moscow, said funds to be withdrawn upon order of a court of competent jurisdiction. The amount here involved was $332,994.15 held by the appellee. It is alleged that this, too, was assigned on November 16, 1933. Demands were made for the payment of these moneys pursuant to this assignment, and refused.

In each case a restraining order against disposition pending the trial of a suit was denied, and on motion supported by affidavits, each of the complaints was dismissed.

The United States claims title to these balances, and asks for an accounting by virtue of two assignments executed by agents of the Russian Government—the Ughet and Litvinov assignments, the first executed prior to, and the second since recognition. The questions presented are: (1) does the claim of the Government to the balance named in the hands of the appellees come within the terms of the so-called "Litvinov assignment"; and (2) assuming it does, what is the effect of a political recognition of the Union of Soviet Socialist Republics, and should such recognition be retroactive and extraterritorial in its effect?

As to the first question: On the 16th of November 1933, Litvinov, the People's Commisar for Foreign Affairs of the Soviet Union, executed in his official capacity, an assignment which was a part of the general scheme of recognition of the Soviet Union by the terms of which it assigned to the Government of the United States,

"the amounts admitted to be due or that may be found to be due it (the Soviet Government), as the successor of prior governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, * * *."

Questions as to this assignment must be resolved according to the maxims and principles of the law of nations (*Henfield's Case*, 11

Fed. Cas. p. 1089, 1101), which require that a formal engagement between two nations—whether such engagement be in the form of a treaty or of an executive agreement—should be construed as liberally and untechnically as the exigencies of the case may demand in order to effectually carry out the evident or probable design of the parties in executing it. *Ware* v. *Hilton*, 3 Dall. 299; *The Amiable Isabella*, 6 Wheat. 71; *United States* v. *Arredondo*, 6 Pet. 691; *Geofroy* v. *Riggs*, 133 U. S. 267; *Wright* v. *Henkel*, 190 U. S. 40; *Rocca* v. *Thompson*, 223 U. S. 317.

"Such solemn international instruments between independent sovereignties as public treaties, intended primarily for the common advancement of their individual interests, the interests of civilization, and the promoton of international amity, are not to be read as rigidly as documents between private persons governed by a system of technical law, but, so far as it can be done without the sacrifice of individual rights or those principles of personal liberty which lie at the foundation of our jurisprudence, should be construed in the light of that larger reason, that broader, fairer, and more liberal sense calculated to perpetuate that international concord which constitutes the spirit of the law of nations" (Puente, International Law, p. 228).

The ultimate design of the two countries in executing this assignment was to transfer "the claims and counterclaims between the Governments of the Union of Soviet Socialist Republics and the United States of America, and the claims of their nationals", to the broad plane of diplomacy, and by placing those claims beyond the reach of vexatious judicial action, to facilitate at one stroke, the adjustment of the delicate points at issue between the two countries. No narrow or strained construction of that instrument is permissible under these circumstances. The funds at issue are admitted to be the balances of the assets of Russian corporations with branch offices here affected by the Soviet decrees whose local business was liquidated by the courts of the State of New York. *Matter of Moscow Fire Ins. Co.*, 255 N. Y. 433. If it be sound, as the appellant contends, that the effect of the Soviet decrees is to vest in the Soviet Government complete title to those funds, and to give that government a cause of action to recover them, then, on that hypothesis, we would be bound to hold that the funds in the safe keeping of appellee—an "American national"—are such as "may be found to be due" the Soviet Government within the terms of the assignment; that is, which "ought to be paid" by appellee, or which "may be demanded" by the assignor. 1 Bouvier, Law Dictionary, 3rd Ed. by Rawle, 946; *Ransom* v. *Bidwell*, 89 Conn. 137. The fact that by the terms of the assignment the Soviet Government has renounced its right to sue American nationals who may be indebted to it, is a circumstance strongly urging upon us the broadest possible interpretation of the terms of the assignment. If, however, the effect of the Soviet decree is not such as to vest title to the funds in the Soviet Govern-

ment, then there would be no question that the funds would not fall within the terms of the assignment and the claims of the appellant must fail. Whether or not the funds here involved are included in the terms of the assignment depend upon the juristic effect of the political act of recognition, and on the degree of extraterritorial force which international comity—the *comitas gentium*—ordains that we should give to Soviet legislation of this character.

The conduct of the international relations of the nation is a matter of state (*The Rogdai*, 278 Fed. 294) which the Constitution has properly placed in the hands of the executive and legislative, that is, the "political" departments of the national government, and the propriety of whatever may be done in the exercise of this political power is not subject to judicial review or inquiry. *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, 302; *Terrazas* v. *Donohue*, 227 S. W. 206 (Court of Civil Appeals, Tex.). No doctrine of public law is more firmly established than this: That it belongs exclusively to the department constitutionally in charge of the external affairs of the nation to recognize or decline to recognize a new government in an old state or a new state carved out of an old one (*Rome* v. *Himely*, 4 Cranch. 272; *Gelston* v. *Hoyt*, 3 Wheat. 246; *Kennett* v. *Chambers*, 14 How. 38; *Selnicki* v. *Phila. Natl. Bank*, 273 Pa. 110) and to determine, in case of recognition, who is the *de jure* or *de facto* sovereign in such country. *Jones* v. *United States*, 137 U. S. 202; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Agency of Canadian Car & Foundry Co.* v. *American Car Agency*, 258 Fed. 363 (C. C. A. 2). That determination, when made by the political department of the government, concludes our courts on the legal status of such sovereign or government. *Ricaud* v. *Amer. Metal Co.*, 246 U. S. 304; *Jones* v. *U. S.*, 137 U. S. 202, 212; *Republic of Peru* v. *Peruvian Guano Co.*, 36 Ch. Div. (1887) 489.

Recognition is adequately defined as the act by which a state, which is already a member of the community of nations, signifies that it accepts another state as a juristic person of international law, with all the rights and obligations which the law establishes. *A. M. Luther* v. *James Sagor & Co.*, (1921) 3 K. B. Div. 549. While recognition is not necessary to enable a state to maintain its internal sovereignty (*McIlvaine* v. *Coxe's Lessee*, 4 Crane 209, 212; *Wulfsohn* v. *Russian S. F. S. Republics*, 234 N. Y. 372; *Salimoff & Co.* v. *Standard Oil Co.*, 262 N. Y. 220, 226, 227; Wheaton's International Law, Lawrence's Ed. p. 36), the authorities are nevertheless in accord that it is ordinarily indispensable to make the state's external sovereignty effective, or, to express it differently, to enable the state to become a juristic person of international law. *United States* v. *Hutchings*, 2 Wheeler Cr. Cas. 543, Fed. Cas. No. 15,429; Holland, Lectures on International Law, Walker's Ed., 1933, p. 91; 1 Oppenheim, International Law, 4th ed. 1928, § 71 p. 143; 1 Louter, Le Droit International Public Positif [1920], p. 218; Visscher, Les Gouvernements etrangers en Justice, Revue de Droit International, Ser. III [1922], v. 3, p. 149; Ullmann, Trattato di Diritto Internazionale Pubblico,

tr. by Buzzati, 1914, § 30, p. 184. Recognition clothes a *de facto* state with an international status (*Salimoff & Co.* v. *Standard Oil Co.*, 282 N. Y. 220, 227) and confirms the self-existence of such state (Zeffter, Le Droit International de l'Europe, Bergson's trans. [1883] p. 61). It implies a formal engagement to respect the rights and powers of sovereignty in the new state and to accept its form of government as adequate to express its rational and normal will.

"In recognizing the state, we consequently recognize its legislative capacity; we accept its legislation, both statutory and consuetudinary, as defining the laws of its national existence sufficiently for international purposes." (1 Lorimer, The Institutes of the Law of Nations [1883] 325.)

Recognition, moreover, clothes the state recognized with international capacity to enter into diplomatic relations and to conclude treaties (1 Oppenheim, op. cit., § 75*d*, p. 15 and accepts the validity and efficacy of the acts of the recognized state—be those acts executive, legislative, or judicial—and it impresses upon them a retroactive effect from the commencement of the existence of such state or government. Thus, the Supreme Court has said in *Oetjen* v. *Central Leather Co.* (246 U. S., 303), that "recognition is retroactive in effect and validates all the actions and conduct of the government so recognized from the commencement of its existence." In *Underhill* v. *Hernandez* (168 U. S. 250, 253), the Court said:

"If the party seeking to dislodge the existing government succeeds, and the independence of the government it has set up is recognized, then the acts of such government from the commencement of its existence are regarded as those of an independent nation."

The same principle has been accepted by tribunals of respectable authority in other countries. In England, the House of Lords in *Lazard Bros. & Co.* v. *Midland Bank, Ltd.* [1933] A. C. 289, decided that—

"The effect of such recognition is retroactive and dated back to the original establishment of Soviet rule which was in the 1917 October Revolution, as was held by the Court of Appeals in Aksionairnoye Obschestve *A. M. Luther* v. *James Sagor & Co.*"

In France, the Civil Tribunal of the Department of the Seine in *De Mayenne* c. *Jeutel*, 55 Clunet, 710 [1926] held that—

"the effect of the *de jure* recognition of the Union of the Soviet Socialist Republics, except as it attempts to take away vested rights, is retroactive and goes back to the day of the commencement of the juridical existence of the new government."

Protected by the retroactive effect of recognition are also legislative (*Murray* v. *Vanderbilt*, 39 Barb. 140, 146) and executive (*Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Monte Blance Real Estate Corp.* v. *Wolvin Line*, 145 La. 563, 85 S. E. 242) acts of confiscation.

We must take judicial notice of the recognition of the Soviet Government by our Government on November 16, 1933 (*Jones* v. *United States*, 137 U. S. 202; *Underhill* v. *Hernandez*, 168 U. S. 250; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Ricaud* v. *Amer. Metal Co.*, 246 U. S. 304; *City of Berne* v. *Bank of England*, 9 Ves. 347,

32 Repr. 636; *Mighell* v. *Sultan of Jehore* [1894], 1 Q. B. Div. 149, 158, 161, A. C.; *Duff Development Co.* v. *Govt. of Kelantan* [1924], A. C. 797, H. of Lords), and applying the foregoing principles to the state of facts before us, we are bound by the determination of our political department regarding the international legal status of the Soviet Government; that recognition having been accorded, we must accept the Soviet Government as a legitimate governmental authority in Russia, and its institutions and laws as adequate expressions of the national will to meet the requirements of international law; that the effect of the recognition of that Government is to retroact upon and validate for international purposes all the acts, whether legislative, executive, or judicial, of that Government, including the decrees by which the property and assets of the respective insurance companies were affected from October 1917, when that Government came into power.

But, as each nation can legislate only for itself (The Antelope, 10 Wheat. 66, 122), to hold, as we must, that the recognition of the Soviet Government is retroactive, and that its actions are validated, in our judgment, does not answer the question on which these cases necessarily revolve, namely, whether the legislation of the Soviet Government, as it affects these insurance companies, should be recognized and applied by our courts, so as to vest in the Soviet Government, title to the assets of the corporations, located here, and thus enable that government to assign such title to the United States as it purports to do. That question is not free from intrinsic difficulties, and the studied views of those who have considered and written on the subject, and the obiter dicta of the courts as they have had occasion to comment on it, are far from being in agreement. Realizing that for the first time, perhaps, in the judicial history of this country, the courts have been called upon by a foreign power, with whom we are now in relations of amity, to give extraterritorial effect with respect to property located here, to its admittedly confiscatory legislation, requires that we approach the subject with caution. That the legislation of each State is local in character and has no force proprio visore, beyond its jurisdiction, is a principle flowing from and in entire harmony with the dominant conceptions of political science in every land. In the case of The Apollon (8 Wheat. 362, 370) [1824], Mr. Justice Story said:

"The laws of no nation can justly extend beyond its own territory, except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation, within its own jurisdiction. And, however general and comprehensive the phrases used in our municipal laws may be, they must always be restricted in construction, to places and persons upon whom the legislature have authority and jurisdiction."

This general principle has been followed down to the present time without any material variation. *Canada Southern R. Co.* v. *Gebhard*, 109 U. S. 527, 536; *Huntington* v. *Attrill*, 146 U. S. 659, 689; *Hilton* v. *Guyot*, 159 U. S. 113, 163; *Second Russian Ins. Co.* v.

*Miller*, 297 Fed. 404 (C. C. A. 2). It is also accepted in the English courts (*Sedgwick Collins & Co.* v. *Russian Ins. Co.* [1925] 1 K. B. Div. 1, 15). The principle is given even a more rigorous application with respect to foreign laws or judgments which are contrary to morals, to public policy or prejudicial to local interest (*Bank of Augusta* v. *Earle*, 13 Pet. 519, 589; *Vladikavkazsky Ry. Co.* v. *N. Y. Trust Co.*, 263 N. Y. 369, 378), or are of a penal character (*Baglin* v. *Cusenier*, 221 U. S. 580; *Huntington* v. *Attrill*, 146 U. S. 657, 667; Wharton, A Treatise on the Conflict of Laws, 2d Ed. [1881] §4).

But, within the sphere of sovereignty enacting it, that legislation is effective to regulate fully the status of all persons and things therein, and to determine the juristic effect of every act or relationship done or established under it. To the full force of this principle, the respective insurance companies had to yield their unqualified assent. They came into being under the laws of an imperial sovereign; they lived many years under the imperium of those laws; and in 1918 a new sovereign power, the legitimacy of which has been explicitly accepted by our government, cut short their lives; it took over their corpus—their properties and assets. Such was the fate of these corporations in territories subject to Russian jurisdiction. As to the fate of the branches of these corporations here, the problem is not simple, for there the acts of the Russian Government may clash with local conceptions of private international law or policy.

That the continuity and conditions of juristic personality depend on the pleasure of the legislator who creates it, may safety be admitted. 9 Holdsworth, A History of English Law [1926] p. 48.

In *Canada Southern R. Co.* v. *Gebhard* (109 U. S. 527, 537), the Supreme Court said:

"Whatever disabilities are placed upon the corporation at home it retains abroad, and whatever legislative control it is subjected to at home must be recognized and submitted to by those who deal with it elsewhere. A corporation of one country may be excluded from business in another country (*Paul* v. *Virginia*, 8 Wall. 168), but, if admitted, it must, in the absence of legislation equivalent to make it a corporation of the latter country, be taken, both by the government and those who deal with it, as a creature of the law of its own country, and subject to all the legislative control and direction that may be properly exercised over it at the place of its creation."

And there is no reason why the suppression of a juristic person by the legislative act of a sovereign which created it, should be regarded by the courts of other countries as contrary to their public policy. The fortune that betakes a corporation under the law which created and controlled it, betakes in like measure the branch offices both at home and abroad. The reason for this is that a branch office is nothing more, in the eyes of the law, than a prolongation of the life of the foreign corporation, without independent juristic existence of its own. This is the posture taken on repeated occasions with regard to the branch offices of these extinct Russian corporations, by

the courts of Poland (Affaire de *Julien Muszkat* c. *Soc. d'Assur. Rossia* [1929], Supt. Ct., 58 Clunet, 770, 771); France (*Banque generale pour de Commerce etranger* c. *Jaudon* [1924] Trib. civ. Seine, 52 Clunet, 419, 420; *Cie. Nord de Moscou* c. *Phenix Espagnol* [1928] Cour d'Appel, Paris, 56 Clunet, 119, 130; *Soc. Vairon et Cie.* c. *Banque de Commerce de Siberie* [1928] Sirey, Rec. Gen., Jour. du Pal., 161, Cour d'Appel, Bordeaux); and Switzerland (*Banque internazionale de Commerce de Petrograd S. A.* [*Succursale de Geneve*] c. *Hausner* [1924] Trib. Federal, 52 Clunet 488). It is also the position taken by the British courts in *Banque Internationale de Commerce de Petrograd* v. *Goukassow* [1923], 2 K. B. 682, C. A. Scrutton, L. J. And in *Lazard Bros. & Co.* v. *Midland Bank, Ltd.* [1933] A. C. 289, Lord Wright said:

"English courts have long since recognized as juristic persons corporations established by foreign law in virtue of the fact of their creation and continuance under and by that law. Such recognition is said to be by the comity of nations. * * * But as the creation depends on the act of the sovereign state which created them, the annulment of the act of creation by the same power will involve the dissolution and nonexistence of the corporation in the eyes of English law. The will of the sovereign authority which created it can also destroy it. English law will equally recognize the one, as the other, fact."

The same rule was recognized in *Russian Reinsurance Co.* v. *Stoddard, Jr., Supt. of Ins.*, 240 N. Y. 149, 154. But the Court of Appeals of New York, in recent cases, seems to have adopted what may be called the organic theory of juristic personality in opposition to the fictional theory which to this day has held a predominant position in the field of legal philosophy and judicial history and is the theory of our own law. Thus in *Petrogradsky M. K. Bank* v. *National City Bank* (253 N. Y. 23, 28 [1930], the court said:

"We think the plaintiff is not dissolved, but is still a juristic person with capacity to sue."

In *Severenoe Securities Corp.* v. *London & Lancashire Ins. Co. Ltd.* (255 N. Y. 120, 122 [1931]), a Russian corporation, whose juristic personality was in dispute, was declared to retain "a pallid life as the shade or little more of its former self." *In Matter of People* (Russian Reinsurance Co.) (255 N. Y. 415, 425 [1931]), the Russian corporations were declared to be "still juristic persons." In *Salimoff & Co.* v. *Standard Oil Co.* (262 N. Y. 220, 225 [1933]) in speaking of Russian banking and insurance corporations, the court observed that

"* * * corporations nonexistent in Soviet Russia have been, like fugitive ghosts endowed with extraterritorial immortality, recognized as existing outside its boundaries. The juristic person, the Russian corporation, dead in the country which created it, has received juridical vivification elsewhere."

This reasoning in the cases referred to coming before the court of appeals prior to the recognition of the Soviet Government, might

have some theoretical justification, on the ground, possibly, of the technical continuity of the ancient Russian regime (*Rome* v. *Himely*, 4 Cranch. 272; *Gelston* v. *Hoyt*, 3 Wheat. 246; Re Ambrose Light, 25 Fed. 412) and the presumed illegality of the new (*Salimoff & Co.* v. *Standard Oil Co.*, 262 N. Y. 220, 224), a view, however, which has not passed unchallenged by high authority (*Banque Internationale de Commerce de Petrograd S. A.* [*succursale de Geneve*] c. *Hausner* [1924], Trib. Federal, Switzerland, 52 Clunet, 488). But that the logic of these cases should be extended, as is pretended (*Vladekavkazsky Ry. Co.* v. *N. Y. Trust Co.*, 263 N. Y. 369, 378), to acts whose legality we have tacitly approved when we recognized the Government under whose authority they were done, is clearly a breach of the comity which one nation owes another. So singularly frail is the foundation of such reasoning when applied after an act, e. g., recognition which necessarily must alter the judicial application of legal theories, that the New York Court of Appeals stands alone on this proposition. In thus holding, it goes against the current of authority and controlling principles of public international law which nations in relation to mutual friendliness must observe toward each other. Considering the matter as a question of fact—i. e., failure of proof of extinction—and not of legal theory, as the New York courts have done, the House of Lords of England held in 1925 that banking corporations were not dissolved by Russian nationalization decrees of December 14, 1917 (*Russian Commercial & Industrial Bank* v. *Comptoir d'Escopte de Mulhouse* [1925], A. C. 112, 134, L. H.; *Banque Internationale de Commerce de Petrograd* v. *Goukassow* [1925], A. C. 150, H. L.).

Passing from the imponderables of juristic theory—corporate personality—to its ponderables—corporate assets—we invoke, in a truer and broader sense, the application of principles of public and private international law which must be made to coexist and to cooperate toward the adoption of a policy of substantial justice.

A practical result of the political sovereignty of each country is the right of each to change its political institutions at discretion, and to legislate concerning its own interests according to its convenience and needs. Sec. Webster, Jan. 12, 1852; *King of Prussia* v. *Kuepper's Admr.*, 22 Mo. 550 [1856]; *Dougherty* v. *Equitable Life Assurance Society*, 266 N. Y. 71, 83.

Thus, in the exercise of the right accorded to every state by the most widely accepted of all the principles of the law of nations, the Soviet Government nationalized the business of insurance in which these companies were engaged, and confiscated their property. No doubt exists that the operation of the laws of a foreign state often transcend, and necessarily so, their territorial orbit of action. What gives them force in other jurisdictions is the comity between nations which calls on the representatives of each sovereign state to observe a mutual respect in considering the effects of such of their official acts as project themselves into a foreign jurisdiction. *Bank of Augusta* v. *Earle*, 13 Pet. 519, 589; *Second Russian Ins. Co.* v. *Miller*,

297 Fed. 404, 409 (C. C. A. 2); *Hilton* v. *Guyet*, 159 U. S. 113, 163; *Sedgwick Collins & Co.* v. *Rossia Ins. Co.* [1926], 1 K. B. 1, 17, C. A. And, as a general rule, the acts of the recognized government when invoked by litigants in the forum of a friendly nation, will not be permitted to be impeached. "Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory." *Underhill* v. *Hernandez*, 168 U. S. 250, 252. The reason, of course, is that to permit the validity of those acts to be reexamined and perhaps condemned by the courts of another would very certainly imperil the amicable relations between governments and vex the peace of nations. *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, 304.

Two possible grounds exist for refusing to give the Soviet decree extraterritorial application. One is public policy; the other is its penal character—assuming it is penal. The conception embodying the idea of public policy is wrapped in considerable vagueness as is generally admitted. *Hadden* v. *Barney*, 5 W. 11, 107; *Egerton* v. *Brownlow*, 4 H. L. Cas. 1, 123. The view expressed concerning public policy by these, the highest tribunals of England and the United States, warn against the danger of taking uncertain and unsatisfactory concepts as the deciding yardstick according to which the legislation of the recognized government of Russia is to be accepted or rejected in our courts. Considerations of an international character urge us to accept, with great reluctance, a local conception of public policy as the determining factor in the relations between friendly nations. Is the confiscatory legislation of a recognized government, which produces effects only within its own jurisdiction, and respecting its own nationals or foreigners, per se, against public policy? Certainly not. Speaking of the confiscatory legislation of the State of Georgia in 1782, which expropriated the property of British loyalists, and particularly that of Wright, the provincial governor, during our Revolutionary period, the Lord Chancellor of England, as far back as 1788, said in *Wright* v. *Nuss* (1 H. Blackstone 136, 149, 126 Repr. 83, 89):

"It may be a question for private speculation, whether such a law made in Georgia was a wise or an improvident one, whether a barbarous or civilized institution. But here we must take it as the law of an independent country, and the laws of every country much be equally regarded in courts of justice here, whether in private speculation they are wise or foolish."

This original principle has been accepted without question in subsequent adjudications involving our own national and nationals of the country putting such legislation into effect. *Underhill* v. *Hernandez*, 168 U. S. 250; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Murray* v. *Vanderbilt*, 39 Barb. 140, 146.

Is such legislation against public policy if it seeks extraterritorial application? Gratuitous expressions in the courts of New York, England, and France, give the impression that they would hold—

if the occasion arose—that any infringement of the right of private property, which operates upon property situated in those jurisdictions, would be against their public policy.

But in close analysis, it will be found that many of these expressions were unnecessary to the decision of the actual question before the courts and they do not apply to the specific problem before us. The cases there referred to concern the protection of rights acquired locally, such as the payment of debts, the enforcement of contracts, and the right of succession under the local law, all of which come properly under the operation of well established principles of private international law. On the other hand, there is much authority in the decisions to the effect that there is nothing in the confiscatory legislation of a recognized government which can be against the public policy of the recognizant State, even when the legislation of the former is judged exclusively according to the local conceptions of the latter rather than by general standards. While there is a divergence of opinion on the question whether the Soviet decrees of nationalization are contrary to public policy, it is well to bear in mind the admonition of the Supreme Court in *Hedden* v. *Berney*, *supra*, against the practice of permitting judicial tribunals to decide according to their uncheeked discretion what should be the public policy of a nation, particularly on a question of international concern. The known practice of the executive department of the nation pronouncing the public policy of the nation should be controlling upon the courts in such instances.

The public policy of the country may be declared in the Constitution and, if that instrument is silent, the three departments of the Government have the power within their respective spheres to declare what the public policy is; the executive, by proclamation or some other authoritative act; the legislative, by statute; the judiciary, by judicial decisions. The chief executive, acting as the constitutional organ of international relations, may declare, in the course of the administration of the affairs of the Nation, its public policy with respect to any question within his legitimate competency. The act of recognition of a foreign government may import the equivalent of a definite declaration of policy which the courts would be bound to notice. Should we for any reason disapprove of the policies of a foreign government which seeks our recognition, we would be within our rights in declining to recognize it on that ground solely. In *A. M. Luther* v. *James Sager & Co.* [1921] (3 K. B. 532), it appears that the Soviet Government had been extended de facto recognition by the British Government. It was contended that the confiscatory decrees of that government were in their nature "so immoral, and so contrary to the principles of justice" as recognized in England, that the courts should disregard them, Lord Serutton saying:

"Should there be any government which appropriates other people's property without compensation, the remedy appears to be to refuse to recognize it as a sovereign state. Then the courts could investigate the title without infringing the comity of nations. But

it is impossible to recognize a government and yet claim to exercise jurisdiction over its person or property against its will."

While we have said that recognition is retroactive and that its effect is to preclude the tribunals of the recognizant State from questioning the validity or legality of the actions of the government recognized, and that it invalidates, so far as concerns the tribunals of the recognizant State, transfers of property and other transactions which before recognition would have been treated as invalid by those tribunals (1 Oppenheim, International Law, 4th Ed. [1928] § 75d, p. 155; Hervey, The Legal Effects of Recognition in International Law [1928] 82, 87), an important qualification of this general principle must be formulated, and that is, that as in the interregnum between the establishment of a foreign government in power and its recognition by this Government, it cannot be said to be entitled to any comity and its legislation to any respect (*Rose* v. *Himely*, 4 Cranch, 272; *Gelston* v. *Hoyt*, 3 Wheat. 246) at our hands during such period whatever has been done in the courts, with legal finality, must be regarded as res judicata and valid as against the world. So that in establishing a new policy or changing an old one, the act of recognition must be understood to have effect only from the date it actually takes place as to questions which are res judicata and irrevocable, but as to questions which are still pending or not affected with litigation, or which are political in nature, the effect must be understood as from the commencement of such government. Therefore, during the interregnum, the corporations were correctly regarded here (because of the refusal of our courts on grounds of public policy to give effect to the Soviet legislation), as a juristic person, and as such subject to the application of the principles of private international law, the most frequently invoked in these Russian cases having been the lex rei situs and the lex loci contractus. *Salinoff & Co.* v. *Standard Oil Co.*, 262 N. Y. 220; *Sedgwick Collins & Co.* v. *Rossia Ins. Co.* [1926] 1 K. B. 1; *In re Russian Bank for Foreign Trade* [1933] Chancery 745; *Egger* v. *La Balóise-Vie* [1924], Triv. civ. Seine, 52 Clunet, 1006.

In any litigation between private individuals putting in opposition the laws of respective countries the conflict must be resolved according to the rules of private international law. The principle which during such interregnum applied to the branch offices of these corporations in this country, was clearly formulated in the Treaty on International Commercial Law of Montevideo [1889] (art. 6) as follows:

"The branches or agencies established in a State by a corporation domiciled in another, shall be considered as domiciled in the place where they do business and subject to the jurisdiction of the local authorities regarding the business which they may do."

Under this qualification of the general principle of the retroactivity of the act of recognition, the rights which the Soviet Government acquired here with respect to these companies and their assets under

the decree of nationalization must date only from the date of actual recognition—that is, November 16, 1933; but as to what occurred before, the rights of the Soviet Government must be understood as subordinate to and regulated by the principles of private international law to the extent which those principles govern the rights of our nationals or inhabitants acquired under our laws in the course of business with the companies prior to actual recognition. Anything adjudicated by our courts subsequent to the date of actual recognition must, therefore, be treated as void.

When, therefore, the Soviet Government was recognized, the courts lost all right to continue to inject their prerecognition conceptions of public policy into the international panorama in manifest derogation of the express determination of the political department and the clear juridical implications of the act of recognition. As said by Lord Scrutton, L. J. in *A. M. Luther v. James Sagor & Co.*, *supra:*

"But it appears a serious breach of international comity, if a State is recognized as a sovereign independent State, to postulate that its legislation is 'contrary to essential principles of justice and morality.' Such an allegation might well with a susceptible foreign government become a casus belli; and should in my view be the action of the sovereign through his ministers, and not of the judges in reference to a State which their Sovereign has recognized. The English courts act on the rule 'that an intention to take away the property of a subject without giving him a legal right to compensation for that intention is expressed in unequivocal terms': *Central Control Board* v. *Cannon Brewery Co.* If it were they must give effect to it, and can hardly be more rigid in their dealings with foreign legislation. Individuals must contribute to the welfare of the State, and at present British citizens who may contribute to the state more than half their income in income tax and super tax, and a large proportion of their capital in death duties, can hardly declare a foreign state immoral which considers (though we may think wrongly) that to vest individual property in the state as representing all the citizens is the best form of proprietary right. I do not feel able to come to the conclusion that the legislation of a state recognized by my Sovereign as an independent sovereign state is so contrary to moral principle that the judges ought not to recognize it. The responsibility of recognition or nonrecognition with the consequences of each rests on the political advisers of the Sovereign and not on the judges."

The Russian decrees extinguished the lives of these companies and appropriated their property and general assets. If those decrees were effective to extinguish their lives abroad as well as at home, why should it not be effective also to take over their property and assets abroad where the companies had branches, to as full an extent as at home, if our political department has made a public declaration of policy with respect to such legislation which validates

it, and the rights of those who have claims against the corporations are safeguarded by our courts under the qualification of the principle of retroaction indicated and the established principles of private international law? When, then, our Government recognized that of Russia, it also recognized its legislation. By that legislation, the Government of the Soviets ended the lives of these corporations and took over their assets. That legislation this court is bound to recognize and apply since November 16, 1933, as to matters res judicata, in as full a measure as our political department has recognized it, and we are foreclosed from further questioning it by the very act of recognition. Recognition changes a policy of official disfavor into an attitude of graceful acquiescence. To impeach this legislation now in the courts as being against our public policy would clearly trench upon the sphere of the executive who has already decided the matter in a manner that concludes our courts.

As to the question whether the Russian decree is of a penal character, I do not hesitate to say that I cannot so regard it. A statute is penal if it inflicts a penalty for the violation of some of its provisions (*Huntington* v. *Attrill* (1893), A. C. 150, 156, H. of L.; 3 Bourvier's Law Dictionary, 3rd ed. by Rawle, 1914 p. 2551), or, if it fixes upon a wrongdoer any extraordinary liability in favor of the person wronged, not limited to the damages suffered (*Huntington* v. *Attrill*, 146 U. S. 657, 667). It is evident that the reported cases do not indicate that they are vitiated with the criminal or tortious elements which these definitions involve. In *Baglin* v. *Cuzenier* (221 U. S. 580) and *Lecouturier* v. *Roy* (1910) (A. C. 262) which have been cited by counsel as authority against the retroactivity of the supposedly confiscatory legislation of the French Government, must be considered in the light of the French law—the Loi relative au contrat d'association, of July 1, 1901, 63 Bull. des Lois, 12 c. ser., II Sem. (1901), pt. princ., p. 1273)—art. 19 of which provides: "The provisions of art. 463 of the penal code shall apply to offenses contemplated by the present law."

That law clearly fell within the terms of the first portion of our definition.

The right of the United States to sue in the national court has been questioned on the ground that the balances claimed by appellant are now, as it is alleged in process of adjudication in the State courts, and the majority opinion turns upon this question. To uphold the jurisdiction of the State courts, and avoid giving extraterritorial effect to the Soviet decrees, the majority opinion has taken the unwarranted position that the effect of the dissolution of the insurance company upon its assets was to debase the sovereignty of the State to the status of the corporation. The majority opinion reads: "Consequently we must for present purposes take the Soviet Government to have become to all intents and purposes the Russian insurance corporation in Russia which owned the deposit in New

York subject to the fulfillment of the conditions upon which the deposit was made with the New York Superintendent of Insurance."

This position, of course, reverses law, logic, and fact. It reverses law because the dissolution of the corporation and the nationalization of its property did not lower the Soviet Government to the plane of the private litigant without its express consent; it reverses logic, because such dissolution did not assimilate the Russian Government with a corporation which was legally nonexistent; and it reverses fact because such nationalization could not involve a debasement of sovereignty. On the contrary, the dissolution and nationalization had the effect of absorbing the assets of the corporation into the rest of the public assets and placing them beyond the reach of the processes of the tribunals of foreign states. Art. 3, § 2 of the Constitution, says: "the judicial Power shall extend * * * to Controversies to which the United States shall be a Party."

Section 41 of the Judicial Code gives the district courts original jurisdiction of

"All suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue."

The Government is clothed with full juristic capacity to come into its own courts, either as a party plaintiff or an intervenor, to protect or claim its lawful rights. Of this there can possibly be no doubt. But it is said that since the State courts first acquired jurisdiction and control over the res, the United States courts lack authority, under the doctrine of jurisdictional priority repeatedly announced by the Supreme Court (*Lion Bonding Co.* v. *Karatz*, 262 U. S. 77, 88; *Harkin* v. *Brundage*, 276 U. S. 36, 43; *Wabash R.* v. *Adelbert College*, 208 U. S. 38; *Farmers Loan & Trust Co.* v. *Lake Street Elevated R. Co.*, 177 U. S. 51, 61; *Byers* v. *McAuley*, 149 U. S. 608, 614; *Merritt et al* v. *Amer. Steel-Barge Co.*, 79 Fed. 228 [C. C. A. 8]), to entertain these suits and to proceed therein as prayed. To this general principle which, as has been said, is a principle "of right and law, and therefore, of necessity," (*Covell* v. *Heyman*, 111 U. S. 176, 182), and "essential to the dignity and just authority of every court" (*Buck* v. *Colbath*, 3 Wall. 334), I, of course, subscribe. But I perceive no conflict between this salutary rule and the suits brought by the United States in its own courts, if the principles of the retroactivity of recognition and the extraterritoriality of the legislation of a foreign government within the limits already indicated, are regarded in the proper light, and in that light applied to the questions before us.

Upon matters which were res adjudicata on November 16, 1933—the date of recognition of the Soviet Government—under principles of private international law underlying questions of this character, such recognition can have no disturbing effect; upon matters which were pending or not decided with the authority of finality on the date of recognition and which involved the properties or assets of na-

tionalized Russian companies not affected with the application of principles of private international law, it is clear that whatever was done in the State courts was done at the risk of a declaration of nullity, for the courts should have known that they were dealing with the properties or assets of a foreign government whose confiscatory legislation we have approved by the very fact of recognition and by taking an assignment comprising in many instances the fruits of such legislation. Therefore, on the date of recognition the State courts lost jurisdiction and control of the properties and assets in question. The United States was at liberty to proceed in its own courts, without ousting the State courts of jurisdiction, or, of delaying or obstructing the State courts in the exercise of their jurisdiction, or of leading to a conflict of authority between the Federal and the State courts (*Merritt* v. *American Steel-Barge Co.*, 79 Fed. 228 [C. C. A. 8]). In other words, and as a limitation to the principle of jurisdictional exclusion on the grounds of priority, the "possession of the officer of court" was discharged (*Buck* v. *Colbath*, *supra*) by the act of recognition, as to those matters or claims not affected with the application of principles of private international law. It was, therefore, within the competency of the district courts to entertain the suits filed and to issue the injunctive relief prayed by the United States, since § 265 of the Judicial Code, which forbids the Federal courts "to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy", must be construed in connection with § 262 which authorizes the Federal courts "to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law." *Kline* v. *Burke Constr. Co.*, 260 U. S. 226, 228. It may not be maintained that, if after November 16, 1933, the State courts lost jurisdiction over the assets of the recognized Russian Government, any injunction issuing from a court of the United States would act to stay proceedings in any court of the State within the meaning of the statute. No proceedings can be stayed, no ousting of jurisdiction or custody can occur, no delay or obstruction in the exercise of jurisdiction can take place, no conflict of authority can happen, where lawful jurisdiction is wanting by operation of law.

The decree should be reversed.

United States Circuit Court of Appeals, Second Circuit

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the city of New York, on the 27th day of May, one thousand nine hundred and thirty-five.

Present: Hon. MARTIN T. MANTON, Hon. AUGUSTUS N. HAND, Hon. HARRIE B. CHASE, Circuit Judges.

UNITED STATES, PLAINTIFF-APPELLANT

*vs.*

GEORGE S. VAN SCHAICK, AS SUPERINTENDENT ETC., DEFENDANT-appellee

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is affirmed.

It is further ordered that a mandate issued to the said District Court in accordance with this decree.

WM. PARKIN, *Clerk.*

(Endorsement on cover:) United States Circuit Court of Appeals second circuit. *United States* vs. *George S. Van Schaick, Superintendent, etc.* Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed May 27, 1935. William Parkin, clerk.

United States of America, Southern District of New York

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 156, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of United States, plaintiff-appellant, against Louis H. Pink, Superintendent, etc., defendant-appellee, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 27th day of June, in the year of our Lord one thousand nine hundred and thirty-five, and of the Independence of the said United States the one hundred and fifty-ninth.

[SEAL] WM. PARKIN, *Clerk.*

U. S. GOVERNMENT PRINTING OFFICE: 1935

158 Supreme Court of the United States

*Order allowing certiorari*

Filed October 14, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1935